

CHAPTER 94

PLANT INDUSTRY

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Cross–reference: See definitions in s. 93.01.

94.01 Plant inspection and pest control authority.

(1) In the conduct of survey and inspectional programs for the detection, prevention and control of pests, the department may impose quarantines or such other restrictions on the importation into or movement of plants or other material within this state as necessary to prevent or control the dissemination or spread of injurious pests.

(2) In accordance with sub. (1), the department, by summary order, may prohibit the removal of any plant, host plant, or other pest–harboring material from any private or public property, or any area of the state which in its judgment contains or is exposed to injurious pests, except under such conditions as in its judgment are necessary to prevent the dissemination or spread of pests, giving written notice thereof to the owner or person in charge of the property. While such order is in effect no person with knowledge thereof shall cause or permit the removal of any such plant, host plant or other pest–harboring material from such property or area, unless it is in compliance with the conditions of such order. Orders issued under this subsection shall be in writing, have the force and effect of an order issued under s. 93.18, and are subject to right of hearing before the department, if requested within 10 days after date of service. Any party affected by the order may request a preliminary or informal hearing pending the scheduling and conduct of a full hearing.

(3) No person may obstruct or interfere with the examination or testing, by authorized inspectors and agents of the department, of any plants or other material suspected of being infested or infected with any injurious pests; nor may any person move any plants, plant parts, pests or pest–harboring materials contrary to the terms of any quarantine, rule, notice or order under this section.

(4) The department, through its authorized agents or inspectors, may enter at all reasonable times any property for purposes of inspection, investigation and control of suspected pest infestations or infections and may intercept, stop and detain for official inspection any person, truck, vessel, aircraft or other conveyance believed to be carrying plants or other materials infested or

infested with pests, and may seize and destroy any such plants or other materials moved, shipped or transported in violation of any law, rule, quarantine notice or order.

History: 1975 c. 394 s. 18; Stats. 1975 s. 94.01.

Cross Reference: See also s. ATCP 21.02, Wis. adm. code.

94.02 Abatement of pests. (1) If the department finds any premises, or any plants, plant parts, or pest–harboring materials located thereon are so infested or infected with injurious pests as to constitute a hazard to plant or animal life in the state, or any area thereof, it may notify the owner or person having charge of such premises to that effect, and the owner or person in charge shall, within 10 days after such notice, cause the treatment of the premises or the treatment or removal and destruction of infested or infected plants, host plants or other pest–harboring material as directed in the notice. No person may violate the terms of any notice received under this subsection, nor may any damages be awarded to the owner for such treatment, removal or destruction. Any person affected by a notice or order may appeal to the department and request a hearing under s. 94.01 (2).

(2) If the owner or person in charge fails to comply with the terms of the notice, within 10 days after receiving it, the department or any cooperating local unit of government may proceed to treat the premises or to treat or destroy the infested or infected plants or other material. The expense of such abatement shall be certified to the town, city or village clerk and assessed, collected and enforced against the premises upon which such expense was incurred as taxes are assessed, collected, and enforced, and shall be paid to the cooperating unit of government incurring the expense, or into the general fund if the control work was conducted by the department.

(3) If a serious pest outbreak constituting a significant threat to agricultural production or plant life occurs, and cannot be adequately controlled by individual property owners or local units of government in any area of this state, the department may petition the joint committee on finance for emergency funds with which to conduct needed control work independently or on a cooperative basis with the federal or local units of government.

(4) This section pertains to the abatement of pests on agricultural lands and on agricultural business premises. This section does not affect the authority of the department of natural resources under ch. 26.

History: 1975 c. 394 ss. 5, 19; 1975 c. 421; Stats. 1975 s. 94.02; 1977 c. 418; 1981 c. 20.

94.03 Shipment of pests and biological control agents; permits. (1) No person may sell or offer for sale, or move, transport, deliver, ship or offer for shipment, any pest, as defined in s. 93.01 (10) or any biological control agent as defined in sub. (2), without a permit as prescribed by rules of the department. Such rules may provide for reasonable exemptions from permit requirements. Permits may be issued only after the department determines that the proposed shipment or use will not create sufficient hazard to warrant refusal of a permit. Permits shall be affixed to the outside of every shipping container or accompany the shipment as the department directs.

(2) The department may by rule regulate and control the sale and use of biological control agents to assure their safety and effectiveness in the control of injurious pests and to prevent the introduction or use of biological control agents which may be injurious to persons or property or useful plant or animal life. The term “biological control agent” as used in this section means any living organism which because of its parasitic, predatory or other biological characteristics may be effective for use in the suppression or control of pests by biological rather than chemical means.

History: 1975 c. 394 ss. 6, 17; 1983 a. 189 s. 329 (20).

94.10 Nursery stock; inspection and licensing.

(1) DEFINITIONS. In this section:

(a) “Christmas tree grower” means a person who grows evergreen trees for eventual harvest and sale as Christmas trees, except that “Christmas tree grower” does not include a person who grows evergreen trees for eventual harvest and sale as Christmas trees if the person also grows nursery stock for sale and if the person is licensed under sub. (3).

(b) “Nonprofit organization” means an organization described in section 501 (c) of the Internal Revenue Code that is exempt from federal income tax under section 501 (a) of the Internal Revenue Code.

(c) “Nursery” means premises in this state on which a person propagates or grows nursery stock for sale. “Nursery” does not include heeling-in grounds or other premises where a person holds nursery stock for purposes other than propagation or growth.

(d) “Nursery dealer” means a person, other than a nursery grower, who sells, offers for sale or distributes nursery stock from a location in this state, except that “nursery dealer” does not include an employee of a person licensed under this section.

(e) “Nursery grower” means a person who owns or operates a nursery.

(f) “Nursery stock” means plants and plant parts that can be propagated or grown, excluding seeds, sod, cranberry cuttings, annuals and evergreen trees grown for eventual harvest and sale as Christmas trees.

(g) “Officially inspected source” means any of the following:

1. A nursery dealer licensed under sub. (2).
2. A nursery grower licensed under sub. (3).
3. A source outside this state that the department recognizes under sub. (10) as an officially inspected source.

(j) “Sell” means to transfer ownership, for consideration.

(2) NURSERY DEALER: ANNUAL LICENSE. (a) *License required.* Except as provided in par. (f), no person may operate as a nursery dealer without an annual license from the department. A nursery dealer license expires on February 20. A nursery dealer license may not be transferred to another person.

(b) *Applying for a license.* A person applying for a nursery dealer license under par. (a) shall apply on a form provided by the

department. An applicant shall provide all of the following to the department:

1. The applicant’s legal name and address and any other name under which the applicant does business.
2. The address of each location at which the applicant proposes to hold nursery stock for sale.
3. The license fee required under par. (c).
4. The surcharge required under par. (d), if any.
5. Other information reasonably required by the department for licensing purposes.

(c) *License fee.* A nursery dealer shall pay the following annual license fee, based on annual purchases calculated according to par. (e):

1. If the nursery dealer buys no more than \$5,000 worth of nursery stock for resale, \$30.
2. If the nursery dealer buys more than \$5,000 but not more than \$20,000 worth of nursery stock for resale, \$50.
3. If the nursery dealer buys more than \$20,000 but not more than \$100,000 worth of nursery stock for resale, \$100.
4. If the nursery dealer buys more than \$100,000 but not more than \$200,000 worth of nursery stock for resale, \$150.
5. If the nursery dealer buys more than \$200,000 but not more than \$500,000 worth of nursery stock for resale, \$200.
6. If the nursery dealer buys more than \$500,000 but not more than \$2,000,000 worth of nursery stock for resale, \$300.
7. If the nursery dealer buys more than \$2,000,000 worth of nursery stock for resale, \$400.

(d) *Surcharge for operating without a license.* In addition to the fee required under par. (c), an applicant for a nursery dealer license shall pay a surcharge equal to the amount of that fee if the department determines that, within 365 days before submitting the application, the applicant operated as a nursery dealer without a license in violation of par. (a). Payment of the surcharge does not relieve the applicant of any other penalty or liability that may result from the violation, but does not constitute evidence of a violation of par. (a).

(e) *Calculating annual purchases.* The amount of an applicant’s license fee under par. (c) for a license year shall be based on the applicant’s purchases of nursery stock during the applicant’s preceding fiscal year, except that if the applicant made no purchases of nursery stock during the preceding fiscal year the fee shall be based on the applicant’s good faith prediction of purchases during the license year for which the applicant is applying.

(f) *Exemptions.* Paragraph (a) does not apply to any of the following:

1. A person whose only sales of nursery stock are retail sales totaling less than \$250 annually.
2. A person selling or offering to sell nursery stock for the benefit of a nonprofit organization, for a period of not more than 7 consecutive days.

(3) NURSERY GROWER: ANNUAL LICENSE. (a) *License required.* Except as provided in par. (f), no person may operate as a nursery grower without an annual license from the department. A nursery grower license expires on February 20. A nursery grower license may not be transferred to another person.

(b) *Applying for a license.* A person applying for a nursery grower license under par. (a) shall apply on a form provided by the department. An applicant shall provide all of the following to the department:

1. The applicant’s legal name and address and any other name under which the applicant does business.
2. The address of each location in this state at which the applicant operates a nursery, grows evergreen trees for eventual sale as Christmas trees or holds nursery stock or Christmas trees for sale.
3. The license fee required under par. (c) and under par. (cm), if applicable.
4. The surcharge required under (d), if any.

5. Other information reasonably required by the department for licensing purposes.

(c) *License fee.* A nursery grower shall pay the following annual license fee, based on annual sales calculated according to par. (e), plus the additional license fee under par. (cm), if applicable:

1. If the nursery grower annually sells no more than \$5,000 worth of nursery stock, \$40.
2. If the nursery grower annually sells more than \$5,000 but not more than \$20,000 worth of nursery stock, \$75.
3. If the nursery grower annually sells more than \$20,000 but not more than \$100,000 worth of nursery stock, \$125.
4. If the nursery grower annually sells more than \$100,000 but not more than \$200,000 worth of nursery stock, \$200.
5. If the nursery grower annually sells more than \$200,000 but not more than \$500,000 worth of nursery stock, \$350.
6. If the nursery grower annually sells more than \$500,000 but not more than \$2,000,000 worth of nursery stock, \$600.
7. If the nursery grower annually sells more than \$2,000,000 worth of nursery stock, \$1,200.

(cm) *Additional license fee for Christmas tree sales.* A nursery grower that sells Christmas trees shall pay the following additional license fee, based on annual sales calculated according to par. (e):

1. If the nursery grower annually sells no more than \$5,000 worth of Christmas trees, \$20.
2. If the nursery grower annually sells more than \$5,000 but not more than \$20,000 worth of Christmas trees, \$55.
3. If the nursery grower annually sells more than \$20,000 but not more than \$100,000 worth of Christmas trees, \$90.
4. If the nursery grower annually sells more than \$100,000 but not more than \$200,000 worth of Christmas trees, \$150.
5. If the nursery grower annually sells more than \$200,000 but not more than \$500,000 worth of Christmas trees, \$250.
6. If the nursery grower annually sells more than \$500,000 but not more than \$2,000,000 worth of Christmas trees, \$450.
7. If the nursery grower annually sells more than \$2,000,000 worth of Christmas trees, \$900.

(d) *Surcharge for operating without a license.* In addition to the fee required under par. (c) and under par. (cm), if applicable, an applicant for a nursery grower license shall pay a surcharge equal to the amount of that fee if the department determines that, within 365 days before submitting that application, the applicant operated as a nursery grower without a license in violation of par. (a). Payment of the surcharge does not relieve the applicant of any other penalty or liability that may result from the violation, but does not constitute evidence of a violation of par. (a).

(e) *Calculating annual sales.* The amount of an applicant's license fee under par. (c) for a license year shall be based on the applicant's sales of nursery stock during the applicant's preceding fiscal year, except that if the applicant made no sales of nursery stock during the preceding fiscal year the fee shall be based on the applicant's good faith prediction of sales during the license year for which the applicant is applying. If par. (cm) applies to an applicant, the amount of the applicant's additional license fee under par. (cm) for a license year shall be based on the applicant's sales of Christmas trees during the applicant's preceding fiscal year, except that if the applicant made no sales of Christmas trees during the preceding fiscal year the fee shall be based on the applicant's good faith prediction of sales during the license year for which the applicant is applying.

(f) *Exemptions.* Paragraph (a) does not apply to any of the following:

1. A nursery grower whose only sales of nursery stock and Christmas trees are retail sales totaling less than \$250 annually.
2. A person growing nursery stock only for sale for the benefit of a nonprofit organization, for a period of not more than 7 days.

(3g) CHRISTMAS TREE GROWER; ANNUAL LICENSE. (a) *License required.* Except as provided in par. (e), no person may operate as a Christmas tree grower without an annual license from the department. A Christmas tree grower license expires on February 20. A Christmas tree grower license may not be transferred to another person.

(b) *Applying for a license.* A person applying for a Christmas tree grower license under par. (a) shall apply on a form provided by the department. An applicant shall provide all of the following to the department:

1. The applicant's legal name and address and any other name under which the applicant does business.
2. The address of each location in this state at which the applicant grows evergreen trees for eventual sale as Christmas trees or at which the applicant holds Christmas trees for sale.
3. The license fee required under par. (c).
4. Other information reasonably required by the department for licensing purposes.

(c) *License fee.* A Christmas tree grower shall pay the following annual license fee, based on annual sales calculated according to par. (d):

1. If the Christmas tree grower annually sells no more than \$5,000 worth of Christmas trees, \$20.
2. If the Christmas tree grower annually sells more than \$5,000 but not more than \$20,000 worth of Christmas trees, \$55.
3. If the Christmas tree grower annually sells more than \$20,000 but not more than \$100,000 worth of Christmas trees, \$90.
4. If the Christmas tree grower annually sells more than \$100,000 but not more than \$200,000 worth of Christmas trees, \$150.
5. If the Christmas tree grower annually sells more than \$200,000 but not more than \$500,000 worth of Christmas trees, \$250.
6. If the Christmas tree grower annually sells more than \$500,000 but not more than \$2,000,000 worth of Christmas trees, \$450.
7. If the Christmas tree grower annually sells more than \$2,000,000 worth of Christmas trees, \$900.

(d) *Calculating annual sales.* The amount of an applicant's license fee under par. (c) for a license year shall be based on the applicant's sales of Christmas trees during the applicant's preceding fiscal year, except that if the applicant made no sales during the preceding fiscal year the fee shall be based on the applicant's good faith prediction of sales during the license year for which the applicant is applying.

(e) *Exemption.* Paragraph (a) does not apply to a Christmas tree grower whose only sales of Christmas trees are retail sales totaling less than \$250 annually.

(3m) NOTICE OF NEW LOCATIONS. (a) The holder of a nursery dealer license shall notify the department in writing before adding, during a license year, any new location at which the license holder will hold nursery stock for sale. The license holder shall specify the address of the new location in the notice.

(b) The holder of a nursery grower license shall notify the department in writing before adding, during the license year, any new location at which the license holder will operate a nursery, grow evergreen trees for eventual sale as Christmas trees or hold Christmas trees or nursery stock for sale. The license holder shall specify the address of the new location in the notice.

(c) The holder of a Christmas tree grower license shall notify the department in writing before adding, during the license year, any new location at which the license holder will grow evergreen trees for eventual sale as Christmas trees or hold Christmas trees for sale.

(4) NURSERY GROWERS AND DEALERS; RECORDS. (a) *Nursery dealers; records of nursery stock received.* A nursery dealer shall keep a record of every shipment of nursery stock received by the

nursery dealer. The nursery dealer shall include all of the following in the record:

1. A description of the types of nursery stock, and the quantity of nursery stock of each type, included in the shipment.

2. The name and address of the source from which the nursery dealer received the shipment.

(b) *Nursery growers and dealers; records of shipments to other nursery growers and dealers.* Each nursery grower and nursery dealer shall record every shipment of nursery stock that the nursery grower or nursery dealer sells or distributes to another nursery grower or nursery dealer. The nursery grower or nursery dealer shall include all of the following in the record:

1. A description of the types of nursery stock, and the quantity of nursery stock of each type, included in the shipment.

2. The name and address of the nursery grower or nursery dealer receiving the shipment.

(c) *Records retained and made available.* A nursery grower or nursery dealer who is required to keep records under par. (a) or (b) shall retain those records for at least 3 years and shall make those records available to the department for inspection and copying upon request.

(5) LABELING NURSERY STOCK. (a) *Nursery stock shipped to grower or dealer.* No person may sell or distribute any shipment of nursery stock to a nursery grower or nursery dealer, and no nursery grower or nursery dealer may accept a shipment of nursery stock, unless that shipment is labeled with all of the following:

1. The name and address of the person selling or distributing the shipment to the nursery grower or nursery dealer.

2. A certification, by the person under subd. 1., that all of the nursery stock included in the shipment is from officially inspected sources.

(b) *Growers and dealers to report unlabeled shipments.* Whenever any person tenders to a nursery grower or nursery dealer any shipment of nursery stock that is not fully labeled according to par. (a), the nursery grower or nursery dealer shall promptly report that unlabeled shipment to the department.

(c) *Nursery stock sold at retail.* A person selling nursery stock at retail shall ensure that the nursery stock is labeled with the common or botanical name of the nursery stock.

(6) CARE OF NURSERY STOCK. (a) *Adequate facilities.* A nursery grower or nursery dealer shall maintain facilities that are reasonably adequate for the care and keeping of nursery stock held for sale, so that the nursery grower or nursery dealer can keep the nursery stock in healthy condition pending sale.

(b) *Reasonable examinations.* Nursery growers and nursery dealers shall make reasonable examinations of nursery stock held for sale to determine whether that nursery stock is capable of reasonable growth, is infested with injurious pests or is infected with disease.

(7) PROHIBITIONS. (a) *Nursery dealers.* No nursery dealer may do any of the following:

1. Obtain, hold, sell, offer to sell or distribute nursery stock from any source other than an officially inspected source.

2. Misrepresent that the nursery dealer is a nursery grower.

(b) *Nursery growers and dealers.* No nursery grower or nursery dealer may do any of the following:

1. Sell, offer to sell or distribute any nursery stock that the nursery grower or nursery dealer knows, or has reason to know, is infested with plant pests or infected with plant diseases that may be spread by the sale or distribution of that nursery stock.

2. Sell, offer to sell or distribute any nursery stock that the nursery grower or nursery dealer knows, or has reason to know, will not survive or grow.

3. Misrepresent the name, origin, grade, variety, quality or hardiness of any nursery stock offered for sale or make any other false or misleading representation in the advertising or sale of nursery stock.

4. Conceal nursery stock to avoid inspection by the department, falsify any record required under this section or make any false or misleading statement to the department.

(8) DEPARTMENT INSPECTION. The department may inspect nurseries and premises at which nursery stock is held for sale or distribution. The department may inspect premises at which evergreen trees are grown for eventual sale as Christmas trees and premises at which Christmas trees are held for sale or distribution.

(9) DEPARTMENT ORDERS. (a) *Holding orders and remedial orders.* An authorized employee or agent of the department may, by written notice, order a nursery grower or nursery dealer to do any of the following:

1. Temporarily hold nursery stock pending inspection by the department.

2. Remedy violations of this section.

3. Refrain from importing weeds or pests that threaten agricultural production or the environment in this state.

4. Permanently withhold nursery stock from sale or distribution, if the sale or distribution would violate this section or an order issued under this section and the violation cannot be adequately remedied in another manner.

5. Destroy or return, without compensation from the department, nursery stock that is sold or distributed in violation of this section, or an order issued under this section, if the violation cannot be adequately remedied in another manner.

(b) *Hearing.* If the recipient of an order under par. (a) requests a hearing on that order, the department shall hold an informal hearing within 10 days unless the recipient of the order consents to a later date for an informal hearing. The request for a hearing is not a request under s. 227.42 (1). If a contested matter is not resolved at the informal hearing, the recipient of the order is entitled to a class 2 contested case hearing under ch. 227. The department is not required to stay an order under par. (a) pending the outcome of any hearing under this paragraph.

(10) RECIPROCAL AGREEMENTS WITH OTHER STATES. (a) *General.* The department may enter into reciprocal agreements with other states to facilitate interstate shipments of nursery stock.

(b) *Officially inspected sources.* As part of an agreement under par. (a), the department may recognize sources of nursery stock in another state as officially inspected sources.

(c) *Inspection and certification standards.* An agreement under par. (a) may specify standards and procedures for all of the following:

1. Inspecting officially inspected sources of nursery stock.

2. Inspecting and certifying interstate shipments of nursery stock.

History: 1975 c. 394 ss. 20, 22; 1975 c. 421; Stats. 1975 s. 94.10; 1983 a. 189; 1989 a. 31; 1993 a. 16; 1995 a. 27; 1999 a. 9.

94.11 Special inspections; fees. Persons applying for any special inspection and certification of nursery stock or other plants or material as to freedom from infestation or infection shall pay a reasonable fee to cover travel and other expenses of the department.

History: 1975 c. 394 s. 23; Stats. 1975 s. 94.11.

94.26 Cranberry culture; maintenance of dams, etc.

Any person owning lands adapted to the culture of cranberries may build and maintain on any land owned by the person such dams upon any watercourse or ditch as shall be necessary for the purpose of flowing such lands, and construct and keep open upon, across and through any lands such drains and ditches as shall be necessary for the purpose of bringing and flooding or draining and carrying off the water from such cranberry growing lands, or for the purpose of irrigation, fertilization and drainage of any other lands owned by the person; provided, that no such dams or ditches shall injure any other dams or ditches theretofore lawfully constructed and maintained for a like purpose by any other person.

History: 1993 a. 492.

Cross Reference: See also s. NR 19.03, Wis. adm. code.

This section exempts cranberry growers from the permit requirements of s. 30.18 for diversion of water for agricultural purposes. *State v. Zawistowski*, 95 Wis. 2d 250, 290 N.W.2d 303 (1980).

94.27 Liability for damages. Any person who builds or maintains any dam or constructs or keeps open any ditch or drain under s. 94.26 is liable to persons whose lands are overflowed or otherwise injured by the dam, ditch or drain for the full sum of damages sustained, which shall be ascertained under s. 94.28 and recovered under ss. 94.28 to 94.30.

History: 1993 a. 492; 1997 a. 253.

94.28 Arbitrators to fix damages. (1) If a person claiming damages from a dam, ditch or drain cannot agree with the person liable to pay the damages under s. 94.27, the damage claimant shall select one disinterested arbitrator and give notice of the selection to the person against whom the damages are claimed. The person from whom damages are claimed shall, within 10 days after receipt of the notice, select another disinterested arbitrator, not of kin to any of the parties interested in maintaining the dams, ditches or drains, and give notice of the selection to the claimant and to the persons selected as arbitrators.

(2) (a) The persons selected as arbitrators under sub. (1) shall, within 20 days after notice of their appointment, do all of the following:

1. Appoint a disinterested 3rd person to act as arbitrator with them.
2. Fix a time and place at which the arbitrators shall meet to determine the claimant's damages.
3. Give notice of the appointment of the 3rd arbitrator and the time and place of hearing to the interested parties.

(b) At the time and place fixed under par. (a) 2., the arbitrators shall view the premises and hear the proofs and allegations of the parties. Within 10 days thereafter, the arbitrators, or any 2 of them, shall make duplicate statements of the proceedings had by them and of the amount that they order to be paid to the claimant for the claimant's damages and the amount to be paid by the respective parties for the arbitrators' fees and the costs of the proceedings. The arbitrators shall deliver a copy of the statement and order to each party. Within 20 days thereafter, the amount so ordered shall be paid by the party of whom required unless an appeal is taken as provided under s. 94.29.

History: 1993 a. 492; 1997 a. 253.

94.29 Appeal. If either party is not satisfied with the award the party may, within 10 days after the delivery of the copy thereof to him or her, serve upon either of the arbitrators notice of appeal from their award to the circuit court of the county in which the lands or any part thereof are situated and pay to the arbitrators the whole amount of their fees plus the fee prescribed in s. 814.61 (8) (am) 1.; and if the party required to pay the damages gives notice of an appeal therefrom he or she shall file with the notice of appeal an undertaking, signed by 2 or more sureties, to be approved by at least 2 of the arbitrators, in double the amount of the award, conditioned to pay any judgment that may be rendered against the party upon appeal. Upon filing the notice of appeal and undertaking, when required, the arbitrators, or 2 of them, shall, within 10 days, make and sign a full statement of the proceedings had by them and of their award and file the same with the clerk of circuit court and pay the fee prescribed in s. 814.61 (8) (am) 1.; and thereupon the clerk shall enter an action in which the claimant is the plaintiff, which shall be deemed then at issue, and proceedings shall be had thereon in like manner as in other civil actions in the court. Unless the appellant obtains a more favorable judgment upon appeal, he or she shall pay costs; otherwise, the respondent.

History: 1981 c. 317; 1993 a. 16; 1995 a. 27.

94.30 Rights on payment. (1) If neither party appeals from the award under s. 94.28 and the responsible party pays the full amount of damages and costs awarded within the time prescribed under s. 94.28 (2) (b) or if, upon an appeal, a final judgment is rendered in favor of the claimant and the responsible party pays the

judgment and all costs awarded to the claimant within 60 days after entry of the final judgment, that responsible party shall have the perpetual right to maintain and keep the dams, ditches or drains that caused the damage in good condition and repair. Neither the responsible party nor the responsible party's assigns shall be liable for the payment of any further damages on account of the dams, ditches or drains.

(2) If the responsible party fails to make payment as described in sub. (1) within the applicable prescribed time, the responsible party shall forfeit all right under this chapter to maintain the dams, ditches or drains that caused the damage.

History: 1993 a. 492; 1997 a. 253.

94.31 Service of notice. In all cases arising under ss. 94.26 to 94.30 when it shall be necessary to serve any notice upon any person who may be out of the state or whose whereabouts shall not be known to the person desiring to serve the same, such notice may be served upon any agent or employee of such person who may be found within this state, and such service shall have the same effect as if it was made upon the party interested.

94.32 Pay of arbitrators. The arbitrators appointed under s. 94.28 shall each receive \$3 per day for their services, to be paid in whole or in part by either party as the arbitrators determine.

History: 1997 a. 253.

94.35 Cranberry Growers Association. The Wisconsin Cranberry Growers Association shall obtain and publish information relative to the cultivation and production of cranberries. The association shall hold semiannual meetings in August and January at such place as it shall determine.

History: 1983 a. 524.

94.38 Agricultural and vegetable seeds; definitions. When used in ss. 94.38 to 94.46 unless the context requires otherwise:

(1) "Advertisement" means all representations, other than those on the label, disseminated in any manner or by any means relating to seed within the scope of ss. 94.38 to 94.46.

(2) "Agricultural seed" includes the seeds of grass, forage, cereal, fiber crops and lawn seeds and any other kinds of seeds commonly recognized and sold within this state for sowing purposes as agricultural seeds or mixtures thereof, and may include noxious weed seeds if used as agricultural seed.

(3) "Certified seed" means seed produced in compliance with the standards and procedures of a certifying agency and that bears an official label issued for such seed by a seed certifying agency stating that the seed is certified. The 4 classes of certified seed are: breeders, foundation, registered and certified.

(4) "Certifying agency" means an agency designated by any state, territory, possession or foreign country to certify seed.

(4m) "Coated seed" means seed, other than treated seed, which is covered with any substance that changes the size, shape or weight of the seed.

(5) "Hybrid seed" means, for a kind or variety of seed, the first generation seed progeny of a cross produced by controlled pollination which combines 2 inbred lines; one inbred line and a single cross; 2 single crosses; one inbred line or a single cross with an open pollinated variety; or 2 selected clones, seed lines, varieties or species. "Hybrid seed" does not include seeds incidentally produced as a result of incomplete control over pollination.

(6) "Kind" means one or more related species or subspecies which singly or collectively is known by one common name, such as corn, oats, alfalfa or timothy.

(7) "Label" means the display of written, printed or graphic matter upon or attached to the container of seed or, for seed sold in bulk quantities, included with the invoice or shipping document furnished the purchaser at time of delivery.

(8) "Labeler" means any person who as grower, processor, jobber, distributor or seller labels seed or accepts responsibility for labeling information pertaining to any container or lot of agri-

cultural or vegetable seed and whose name and address is required to appear on the label under s. 94.39.

(9) “Labeling” includes all labels and other written, printed or graphic representations, in any form whatsoever, accompanying or pertaining to any seed whether in bulk or in containers and includes representations on invoices.

(10) “Lawn seed” means the seed of grasses, clovers or other agricultural seeds or mixtures thereof commonly used or sold for seeding lawns, parks or turf areas in this state.

(11) “Lot” means a definite quantity of seed identified by a lot number or other mark, every portion or bag of which is uniform within recognized tolerances for the factors which appear in the labeling.

(12) “Noxious weed seeds” are divided into 2 classes, “prohibited noxious weed seeds” and “restricted noxious weed seeds” and are defined as follows:

(a) “Prohibited noxious weed seeds” include the seeds of field bindweed (*Convolvulus arvensis*), leafy spurge (*Euphorbia esula*), Canada thistle (*Cirsium arvense*) and quack grass (*Agropyron repens*).

(b) “Restricted noxious weed seeds” include the seeds of dodder (*Cuscuta* spp.), wild mustard (*Sinapis arvensis*), Indian mustard (*Brassica juncea*), buckhorn (*Plantago lanceolata*), ox-eye daisy (*Leucanthemum vulgare*), perennial sow thistle (*Sonchus arvensis*), wild radish (*Raphanus raphanistrum*), yellow rocket (*Barbarea vulgaris*), wild oats (*Avena fatua*), giant foxtail (*Setaria faberi*), hoary alyssum (*Berteroa incana*), downy brome (*Bromus tectorum*) and white cockle (*Silene alba*).

(13) “Person” includes any individual, firm, partnership, limited liability company, corporation, company, society or association.

(14) “Preinoculated seed” means legume seed which has received an application, prior to sale, of a culture of bacteria which will effectively inoculate the legume as shown by nodulation of the roots, growth of the plants and accumulation of nitrogen in the plants.

(15) “Pure seed”, “germination”, “hard seed” and other terms commonly used in labeling and testing seeds shall be as defined in the rules of the department.

(16) “Record” means all information relating to lot, identification, source, origin, variety, amount, processing, blending, testing, labeling, sale and distribution of seed and includes a file sample of each lot.

(18) “Seizure” means the taking of legal custody over seed by court order.

(19) “Stop sale” means a department order restraining the sale, use, disposition or movement of seed.

(20) “Treated seed” means seed which has received an application of a substance, or has been subjected to a process in such a way as to reduce, control or repel certain disease organisms, insects or other pests attacking seeds or seedlings growing therefrom.

(21) “Type” means a group of varieties so nearly similar that the individual varieties cannot be clearly differentiated except under special conditions.

(22) “Variety” means a subdivision of a kind based on growth, yield, plant, fruit, seed, disease resistance or other characteristics by which it can be differentiated from other plants of the same kind.

(23) “Vegetable seed” includes the seeds of crops which are grown commercially and in home gardens as vegetables for human consumption and are commonly known and sold in this state as vegetable seeds.

(24) “Weed seeds” includes the seeds of all plants generally recognized as weeds within this state, and includes noxious weed seeds.

History: 1975 c. 39, 308; 1983 a. 189; 1985 a. 138; 1993 a. 112.

94.385 Seed label locations. (1) Each container of agricultural or vegetable seed which is sold, distributed or offered or exposed for sale within this state for seeding or sprouting purposes shall bear or have attached to it in a conspicuous place a label containing the information specified in s. 94.39.

(2) Except as provided under s. 94.43 (2), each bulk lot of agricultural or vegetable seed sold within this state for seeding or sprouting purposes shall include with the invoice or shipping document furnished the purchaser at time of delivery a label containing the information specified in s. 94.39.

History: 1985 a. 138.

94.39 Seed labeling requirements. Each label for agricultural or vegetable seed required under s. 94.385 shall be a plainly written or printed label in the English language, giving the following information:

(1) For agricultural seeds:

(a) The commonly accepted name of the kind or kind and variety of each agricultural seed component in excess of 5 per cent of the whole and the percentage by weight of each in order of its predominance. When more than one component is required to be named, the word “mixture” or “mixed” shall be shown conspicuously on the label. Seed components of 5 per cent or less may be named, if desired.

(am) The percentage of hybrid seed included in the pure seed contents of the container or bulk lot, if the percentage is less than 96%. No kind or variety of seed may be labeled as hybrid seed unless the pure seed consists of at least 75% hybrid seed. Designations of hybrid seed shall be treated in the same manner as are names of varieties under par. (a).

(b) Lot number or other identification.

(c) Origin by state or foreign country of alfalfa, red clover, white clover or field corn, except hybrid field corn. If the origin of these crop seeds is unknown, that fact shall be stated.

(d) Percentage by weight of all weed seeds.

(e) The name and rate of occurrence per pound of each kind of restricted noxious weed seed present singly or collectively in excess of:

1. One seed in 2.5 grams of redtop, bent grass and seeds of similar size and weight and mixtures of those seeds.

2. One seed in 5 grams of rough bluegrass (*Poa trivialis*) and seeds of similar size and weight and mixtures of those seeds.

3. One seed in 10 grams of Kentucky bluegrass, timothy and seeds of similar size and weight and mixtures of those seeds.

4. One seed in 20 grams of alsike clover, white clover, reed canary grass and seeds of similar size and weight and mixtures of those seeds.

5. One seed in 30 grams of orchard grass, chewings fescue, red fescue, birds-foot trefoil and seeds of similar size and weight and mixtures of those seeds.

6. One seed in 50 grams of alfalfa, red clover, sweet clover, ryegrass, tall fescue, foxtail millet and seeds of similar size and weight and mixtures of those seeds.

7. One seed in 70 grams of smooth brome, rape and seeds of similar size and weight and mixtures of those seeds.

8. One seed in 90 grams of Japanese millet and seeds of similar size and weight and mixtures of those seeds.

9. One seed in 100 grams of crown vetch and seeds of similar size and weight and mixtures of those seeds.

10. One seed in 150 grams of proso millet, flax and seeds of similar size and weight and mixtures of those seeds.

11. One seed in 250 grams of Sudan grass and seeds of similar size and weight and mixtures of those seeds.

12. One seed in 500 grams of oats, rye, barley, wheat, sorghum, buckwheat, sunflower and seeds of similar size and weight and mixtures of those seeds.

13. One seed in 500 grams of field beans, peas, corn, soybeans and seeds of similar size and weight and mixtures of those seeds.

(f) Percentage by weight of all other crop seeds.

(g) Percentage by weight of inert matter.

(h) For each agricultural seed named under par. (a):

1. Percentage of germination, exclusive of hard seed.

2. Percentage of hard seeds, if present.

3. The calendar month and year the test was completed to determine such percentages.

(i) Name and address of the person who labeled the seed, or who sells, distributes or offers or exposes it for sale within this state.

(3) For vegetable seeds in containers of one pound or less:

(a) Name of kind and variety.

(b) For seeds which germinate less than the standard established by department rule:

1. Percentage of germination, exclusive of hard seed.

2. Percentage of hard seeds, if present.

3. The calendar month and year the test was completed to determine such percentages.

4. The words "Below Standard" in not less than 8–point type.

(c) Name and address of the person who labeled the seed, or who sells, distributes or offers or exposes it for sale within this state.

(4) For vegetable seeds in containers of more than one pound:

(a) The name of each kind and variety present in excess of 5% of the whole and the percentage by weight of each, in order of its predominance.

(b) Lot number or other identification.

(c) For each vegetable seed named:

1. Percentage of germination, exclusive of hard seed.

2. Percentage of hard seeds, if present.

3. The calendar month and year the test was completed to determine such percentages.

(d) Name and address of the person who labeled the seed, or who sells, distributes or offers or exposes it for sale within this state.

(5) For all treated seeds, in addition to other labeling requirements under this section (for which a separate label may be used):

(a) A word or statement indicating that the seed has been treated.

(b) The commonly accepted coined, chemical (generic) or abbreviated chemical name of the substance applied or a description of the process used.

(c) If the substance applied to the seed is harmful to human or other vertebrate animals:

1. The caution statement "Do not use for food, feed or oil purposes" or a similar statement;

2. Words and symbol or a single word indicating the toxicity of the substance used to treat the seed, such as "Danger — Poison" and the skull and crossbones symbol, "Warning" or "Caution"; and

3. A statement setting forth the antidote, if any, and the first aid treatment directions for poisoning by the specific substance.

(6) For all preinoculated seeds, in addition to other labeling requirements under this section (for which a separate label may be used):

(a) A word or statement indicating that the seed has been preinoculated.

(b) The date beyond which the inoculant is not to be considered effective.

(7) For field corn seed, in addition to other labeling requirements under this section:

(a) The commonly accepted name of the variety or, if none, descriptive name.

(b) The relative maturity ascribed by the labeler.

(8) For all coated seeds, in addition to other labeling requirements under this section, a word or statement indicating that the seed has been coated.

History: 1975 c. 39, 308; 1985 a. 138.

94.40 Seed certification. (1) No alfalfa seed may be sold, distributed or offered or exposed for sale within this state if labeled, advertised or represented as the vernal variety, unless the seed has been certified by a seed certifying agency.

(2) The Wisconsin Crop Improvement Association, a non-profit organization incorporated under the laws of this state, in cooperation with the University of Wisconsin—Madison College of Agricultural and Life Sciences and the department, shall be the seed certifying agency for the certification of agricultural and vegetable seed in the state.

(3) The Wisconsin Crop Improvement Association, in cooperation with the University of Wisconsin—Madison College of Agricultural and Life Sciences, shall establish standards and procedures for the certification of seed, subject to approval of the department. Standards and procedures established under this subsection shall be no less stringent than those prescribed by the association of official seed certifying agencies.

History: 1973 c. 335 s. 12; 1977 c. 29 s. 1650m (4); 1985 a. 138.

94.41 Prohibitions. (1) It is unlawful for any person to sell, distribute or offer or expose for sale any agricultural or vegetable seed:

(a) Unless the test to determine the percentage of germination required under s. 94.39 is completed within a 12–month period immediately prior to the date it is sold, distributed or offered or exposed for sale, as shown by records, exclusive of the calendar month in which the test is completed, except that seeds packaged in hermetically sealed containers may be sold, distributed or offered or exposed for sale under such conditions as the department may prescribe, for a period of 36 months following the month in which the seeds are tested. No seeds in hermetically sealed containers shall be sold, distributed or offered or exposed for sale beyond such 36–month period unless retested within the preceding 9–month period, exclusive of the calendar month in which the retest is completed. Seed, for which the germination test date has expired, shall be relabeled by a licensed labeler prior to its being sold, distributed or offered or exposed for sale.

(b) Not labeled in accordance with s. 94.39, or containing any labeling statements which modify or deny label information required under s. 94.39, or having any other false or misleading labeling.

(c) Pertaining to which there has been a false or misleading advertisement, claim or representation.

(d) Containing prohibited noxious weed seeds in excess of tolerances established by rules of the department.

(e) Containing restricted noxious weed seeds singly or collectively in excess of:

1. One seed in one gram of the agricultural seeds named in s. 94.39 (1) (e) 1. and 2.

2. One seed in 5 grams of the agricultural seeds named in s. 94.39 (1) (e) 3.

3. One seed in 10 grams of the agricultural seeds named in s. 94.39 (1) (e) 4. to 6.

4. One seed in 15 grams of the agricultural seeds named in s. 94.39 (1) (e) 7.

5. One seed in 20 grams of the agricultural seeds named in s. 94.39 (1) (e) 8. and 9.

6. One seed in 30 grams of the agricultural seeds named in s. 94.39 (1) (e) 10.

7. One seed in 50 grams of the agricultural seeds named in s. 94.39 (1) (e) 11.

8. One seed in 100 grams of the agricultural seeds named in s. 94.39 (1) (e) 12. and 13.

(f) Containing weed seeds in excess of one per cent by weight.

(g) Consisting in part or in whole of prohibited or restricted noxious weed seeds in excess of quantities prescribed herein.

(h) Represented to be certified seed by means of any labeling, advertisement or other representations unless it is certified and bears an official certification label.

(i) Having attached thereto a blue label, unless such label is an official certification label authorized for use on such seed by a seed certifying agency.

(j) When the inoculum applied to preinoculated seed is ineffective as determined by standards established by rules of the department.

(k) Not certified by an official seed certifying agency, if labeled under the variety name of a variety of seed which is protected by and can only be sold as a class of certified seed under a certificate of plant variety protection issued under the federal plant variety protection act (7 USC 2321 et. seq.), provided that seed from a certified lot may be labeled as to variety name when used in a mixture by, or with the approval of, the owner of the variety.

(2) It is unlawful for any person:

(a) To detach, alter, deface or destroy any label attached to or accompanying seed, or to alter or substitute seed in a manner which would defeat the purposes of s. 94.39 or result in the sale or distribution of seed in violation of ss. 94.38 to 94.46 or rules thereunder.

(b) To disseminate any false or misleading advertisements, or make any false or misleading claims concerning agricultural or vegetable seeds in any manner or by any means.

(c) To hinder or obstruct in any way, any authorized person in the performance of the person's duties under ss. 94.38 to 94.46.

(d) To fail to comply with a "stop sale" order or to make any other disposition of any lot of seed contrary to the provisions of such order.

(e) To use the word "trace" as a substitute for any labeling required under s. 94.39 relating to the composition of seeds or seed mixtures.

(f) To use the word "type" in any labeling in connection with the name of any agricultural seed variety.

(g) To make a false declaration of gross annual sales on any application for a seed labeler's license or to fail to keep available for inspection by the department accurate records of gross annual sales of seeds sold in this state as a labeler.

History: 1973 c. 194, 195; 1985 a. 138; 1993 a. 492.

94.42 Exemptions. The provisions of ss. 94.38 to 94.46 do not apply to:

(1) Seed or grain not intended for sowing purposes, except where it is made to appear by labeling, advertising or other representations that it is available for purchase or is being sold, distributed or offered or exposed for sale as seed; or where it is represented as being suitable for use as seed by such terms as cleaned, processed, treated, tested, certified or terms of similar import.

(2) To seed in storage in, or being transported or consigned to, a cleaning or processing establishment for cleaning or processing; but any labeling or other representation which may be made with respect to the uncleaned or unprocessed seed shall be subject to ss. 94.38 to 94.46.

(3) Any carrier in respect to any seed delivered or consigned to it by others for transportation in the ordinary course of its business as a carrier.

(4) Any person in respect to any seed sold, distributed or offered or exposed for sale which was incorrectly labeled or represented as to kind, variety or origin, provided that the seeds cannot be identified by examination thereof, unless the person has failed to obtain an invoice, genuine grower's declaration or other label-

ing information reasonably necessary to insure the seed is as represented.

History: 1985 a. 138.

94.43 Seed labeler's license. (1) Every person whose name and address are required to appear on the label of any seed as the labeler or person responsible for the labeling thereof under s. 94.39, or every person who opens any bag or container of seed and sells any part of the seed contained therein, shall obtain a seed labeler's license from the department before selling, distributing or offering or exposing, such seed for sale in this state.

(2) No person may sell, distribute or offer or expose for sale in this state any seed not labeled by the holder of a seed labeler's license whose name and address are on the label, except that no license shall be required to sell seed of one's own production if it is delivered to the purchaser only on the farm premises where grown or to sell seed only in bags or other closed containers labeled by the holder of a seed labeler's license. Labels are not required for seed packaged at time of sale at retail by the holder of a seed labeler's license if the bin or other container from which the seed is sold bears a label and the seed with its labeling may be readily examined by the purchaser prior to sale. Seed sold by a licensed labeler under this exception shall be considered as having been sold under his or her label for purposes of computing license fees under sub. (3).

(3) Application for a seed labeler's license shall be submitted on a form prescribed by the department and shall be accompanied by a fee based on the gross sales of seed within the state by the applicant under his or her own label during the previous 12 months prior to filing the application. Fees for a labeler's license shall be computed on gross sales according to the following schedule:

(a) For gross sales that are less than \$10,000: \$25.

(b) For gross sales that are \$10,000 or more but less than \$25,000: \$50.

(c) For gross sales that are \$25,000 or more but less than \$75,000: \$100.

(d) For gross sales that are \$75,000 or more but less than \$200,000: \$150.

(e) For gross sales that are \$200,000 or more: \$200.

(4) The license fee for a new applicant or for a person who did not sell seed under his or her own label during the previous 12 months shall be the minimum fee of \$25 for the first year or any part thereof.

(4m) The fees imposed under subs. (3) and (4) shall be credited to the appropriation under s. 20.115 (7) (gm).

(5) The licenses shall expire on December 31 of each year. Licenses shall not be transferable and no fee or any portion thereof shall be refunded after the license has been issued.

History: 1985 a. 138; 1989 a. 31; 1991 a. 269; 1999 a. 83.

94.44 Records. Each person whose name is required to appear on the label as the labeler of agricultural or vegetable seeds pursuant to s. 94.39 shall maintain complete records of each lot of seed sold or labeled for a period of 2 years after final sale or disposition thereof, except that a file sample of such seed need be kept for only one year. This section shall not be construed as requiring a record of the sale or disposal of each portion of a lot sold at retail in quantities of less than 40 pounds. All records and samples pertaining to any lot of seed shall be accessible for inspection by the department during customary business hours.

94.45 Powers and authority of the department. The department is authorized:

(1) To enter during regular business hours all places of business, warehouses, freight depots, cars, trucks and all other places where seed is stored, transported, sold or exposed for sale. The department is empowered to sample any container of seed, analyze and test the samples and inspect all records relating to any lot

of seed in order to secure evidence of violation of ss. 94.38 to 94.46.

(2) To establish and maintain a seed laboratory for the testing and analysis of seed.

(3) To make purity and germination tests of seed for persons on request and for this purpose may prescribe rules governing such testing and fix and collect charges for tests made.

(4) To cooperate with the U.S. department of agriculture and other agencies in seed law enforcement.

(5) To publish at least once a year, in such form as the department deems proper, information concerning the inspection and sales of seed and the results of the analysis of official samples of agricultural and vegetable seeds distributed within the state.

(6) To establish rules, after public hearing:

(a) Governing the methods of sampling, inspecting, analyzing, testing and examining agricultural and vegetable seed, and to prescribe tolerances for purity and germination tests and rates of occurrence of noxious weed seeds.

(b) To add to or remove from the list of prohibited and restricted noxious weed seeds as specified in s. 94.38 (12).

(c) Governing the distribution and labeling of seed.

(d) Providing standards for relative maturities, certification of seed and the effectiveness of inoculum applied to preinoculated seed.

(e) Providing reasonable standards of germination for vegetable seeds.

(f) Providing a list of “fine-textured grasses” and “coarse kinds”.

(g) Governing the issuance of seed labeler’s licenses.

(h) For the administration and enforcement of ss. 94.38 to 94.46.

History: 1975 c. 39, 308; 1983 a. 189 s. 329 (20).

Cross Reference: See also ch. ATCP 20, Wis. adm. code.

94.46 Stop sale; penalties; enforcement. (1) The department may issue a written or printed “stop sale” order to the owner or custodian of any lot of agricultural or vegetable seed not conforming with ss. 94.38 to 94.46, or rules thereunder. The order shall specify the sections of the law or rules violated and shall prohibit the sale or other disposition of the seed except as the department authorizes or directs. Unless the seed is brought into compliance with the law or rules and is released from the “stop sale” order, or other disposition is agreed upon in writing within 30 days after service of the order, the seed shall be disposed of as the department by notice in writing may direct. This shall not preclude the voluntary signing of a disposal agreement without the issuance of a “stop sale” order. Any notice or order hereunder may be served personally or by mail and shall have the effect of a special order under s. 93.18 subject to review under ch. 227 if within 10 days after service of any notice or order, the owner or custodian files with the department a written request for a hearing. Final disposition of the seed shall be stayed during pendency of the hearing but the “stop sale” order shall remain in effect.

(2) Any lot of agricultural or vegetable seed not in compliance with ss. 94.38 to 94.46, or rules thereunder, or not disposed of in accordance with any disposal agreement or order under sub. (1), shall be subject to seizure on complaint of the department to a court of competent jurisdiction. If the court finds the seed to be in violation of law and orders the condemnation of said seed, it shall be denatured, processed, destroyed, relabeled or otherwise disposed of as the court directs.

(3) In addition to or in lieu of other remedies provided for enforcement of ss. 94.38 to 94.46, the department may apply to the circuit court for a temporary or permanent injunction to prevent, restrain, or enjoin any person from violating ss. 94.38 to 94.46 or any rules or orders issued thereunder.

(4) (a) Any person violating ss. 94.38 to 94.46 or rules promulgated thereunder shall forfeit not less than \$100 nor more than \$500 for the first offense. For any subsequent offense occurring

within 5 years of a previous offense, the person shall forfeit, for each offense, not less than \$200 nor more than \$1,000. The 5-year period shall be measured from the dates of the violations which resulted in convictions.

(b) Any person who knowingly violates ss. 94.38 to 94.46 or rules promulgated thereunder may be fined not more than \$500 or imprisoned not more than 6 months or both.

History: 1985 a. 138.

94.50 Cultivated ginseng. (1) DEFINITIONS. In this section:

(a) “Cultivated ginseng” means ginseng dry root, live root, tissue culture or seed that is grown or nurtured in this state by a person.

(b) “Dealer” means a person who buys cultivated ginseng for the purpose of resale, except that it does not include a person who buys cultivated ginseng dry root solely for the purpose of final retail sale to consumers in the United States.

(c) “Ginseng” means *Panax quinquefolius* L.

(d) “Grower” means a person who grows cultivated ginseng and who sells cultivated ginseng to a dealer.

(e) “Out-of-state cultivated ginseng” means ginseng that is grown or nurtured outside this state by a person.

(2) **GROWERS AND DEALERS; REGISTRATION.** No person may act as a grower or a dealer unless he or she is registered with the department. Any person who acts as a dealer and a grower shall register as both. Registrations shall be made annually on a form provided by the department. Registrations expire on December 31 of each year. A dealer shall pay to the department an annual registration fee of \$25. The department shall assign a registration number to each person registered under this subsection. All moneys collected under this subsection shall be credited to the appropriation account under s. 20.115 (7) (ga).

(3) **SALE OR SHIPMENT OF CULTIVATED GINSENG.** (a) Except as provided in par. (f), no person may sell or ship cultivated ginseng to a dealer or ship cultivated ginseng out of this state unless the cultivated ginseng is accompanied by a valid completed shipment certificate which specifies the year of harvest. The person selling or shipping the cultivated ginseng shall complete a valid shipment certificate provided by the department. The person selling or shipping the cultivated ginseng shall on a valid form provided by the department report to the department within 30 days after the sale or shipment, the source of all of the cultivated ginseng included in the sale or shipment. Each person who completes a shipment certificate or report form shall retain a duplicate copy.

(b) The department shall upon request provide each registered grower and dealer with shipment certificates and report forms required under par. (a). The department shall stamp each shipment certificate and report form with the registration number of the grower or dealer. A shipment certificate and report form is valid only if used during the registration period for which the stamp registration number of the grower or dealer was issued. The department may charge a reasonable fee to recover the costs related to providing shipment certificates and report forms. All moneys collected under this paragraph shall be credited to the appropriation account under s. 20.115 (7) (ga).

(c) No dealer may purchase or receive cultivated ginseng unless it is accompanied by a completed shipment certificate. A dealer shall retain the original copy of each shipment certificate he or she receives.

(d) No dealer may purchase or receive out-of-state cultivated ginseng unless the ginseng is accompanied by a valid written certificate, issued by the state of origin, certifying that the shipment consists solely of out-of-state cultivated ginseng. The certificate shall include the source, year of harvest, and dry weight of the out-of-state cultivated ginseng included in the shipment. A dealer shall retain a copy of each written certificate he or she receives.

(e) No person may import out-of-state cultivated ginseng into this state, unless the imported shipment is accompanied by a valid shipment certificate issued by the state of origin. No person may

ship out-of-state cultivated ginseng under a shipment certificate issued by this state.

(f) Paragraph (a) does not apply to a person who sells or ships cultivated ginseng dry root to a person outside of this state who is buying or receiving the cultivated ginseng dry root solely for the purpose of final retail sale to consumers in the United States, if the person selling or shipping keeps a written record of the sale or shipment which shall include all of the following:

1. The name and address of the purchaser or recipient.
2. The dry weight of the cultivated ginseng dry root included in the sale or shipment.
3. The date of the sale or shipment.
4. The source of all of the cultivated ginseng dry root included in the sale or shipment.
5. The year in which the cultivated ginseng dry root was harvested.

(4) INSPECTION OR SUBMISSION OF RECORDS. A dealer or grower shall make all records that are required to be kept under this section available upon request to the department for inspection and copying. A dealer or grower registered in this state shall submit all records upon request to the department that are kept outside of this state and that are required to be kept under this section.

(5) FALSE INFORMATION. No person may include false information on any document or record required under this section, or submit false information to the department in connection with a registration under sub. (2). No person may knowingly accept or retain a document or record required under this section that contains false information to facilitate the sale or shipment of ginseng in violation of this section or s. 29.611.

(6) PUBLIC INSPECTION OF DOCUMENTS AND RECORDS. (a) Documents and records relating to transactions in cultivated ginseng dry root submitted under this section by a grower or dealer to the department are not open to public inspection.

(b) Documents and records relating to transactions in cultivated ginseng live root, tissue culture or seed which are submitted by a grower or dealer to the department under this section shall be open to public inspection under subch. II of ch. 19.

(7) ENFORCEMENT ACTIONS. The department may by an order deny, suspend or revoke the registration of a dealer or a grower and may invalidate shipment certificates completed by the dealer or grower, if the department finds that the dealer or grower has violated this section. The department may by a summary order and without prior notice or hearing, suspend or invalidate the registration and shipment certificates of a dealer or grower if the department finds that there is a need for immediate action to prevent a violation of this section. An order issued under this subsection shall be in writing, have the force and effect of an order issued under s. 93.18, and is subject to a right of hearing before the department, if requested within 10 days after service. Hearings on summary orders shall be conducted within 10 days after receipt of a request for hearing. Enforcement of a summary order shall not be stayed pending the hearing.

(8) PENALTY. A person violating this section shall forfeit not more than \$500 for each violation.

History: 1983 a. 27, 462; 1985 a. 29; 1997 a. 248; 1999 a. 9.

94.64 Fertilizer. (1) DEFINITIONS. As used in this section:

(a) “Brand or product name” means a name term, design or trademark used in connection with one or more grades of fertilizer and which identifies the product as fertilizer.

(b) “Bulk fertilizer” means fertilizer distributed in a nonpackaged form.

(c) “Custom mixed fertilizer” means a mixed fertilizer formulated according to individual specifications furnished by the consumer prior to mixing.

(d) “Distribute” means to import, consign, sell, offer for sale, solicit orders for sale, or otherwise supply fertilizer for sale or use in this state.

(e) “Fertilizer” means any substance, containing one or more plant nutrients, which is used for its plant nutrient content and which is designed for use or claimed to have value in promoting plant growth, except unmanipulated animal or vegetable manures, marl, liming material, sewage sludge other than finished sewage sludge products, and wood ashes. “Fertilizer” includes fertilizer materials, mixed fertilizers, custom mixed fertilizers, nonagricultural fertilizers and all other fertilizers or mixtures of fertilizers, regardless of type or form.

(f) “Fertilizer material” means an element or chemical compound, or a substance manufactured by chemical reaction, which:

1. Contains one or more plant nutrients; and
2. Constitutes a component of fertilizer or is used to compound fertilizer.

(fm) “Finished sewage sludge product” means a product consisting in whole or in part of sewage sludge that is distributed to the public and that is disinfected by means of composting, pasteurization, wet air oxidation, heat treatment or other means.

(g) “Grade” means the percentage guarantee of total nitrogen, available phosphorus or available phosphate, and soluble potassium or soluble potash stated in the same order as listed in this paragraph.

(h) “Guaranteed analysis” means the percentage of each plant nutrient guaranteed or claimed to be present.

(i) “Label” means any written, printed or graphic matter on or attached to packaged fertilizer or which is used to identify fertilizer distributed in bulk or held in bulk storage.

(j) “Labeling” means all labels and other written, printed or graphic matter upon or accompanying fertilizer at any time, and includes advertising or sales literature.

(k) “Manufacture” means to process, granulate, compound, produce, mix, blend or alter the composition of fertilizer or fertilizer materials.

(L) “Mixed fertilizer” means a fertilizer containing any combination or mixture of fertilizer materials, or a fertilizer material and any other substance. A fertilizer material that contains impurities incident to the normal manufacturing or processing operations of that fertilizer material is not a mixed fertilizer as a result of the presence of such impurities unless the impurities are claimed as plant nutrients or fertilizer materials.

(Lm) “Nonagricultural fertilizer” means any fertilizer distributed for nonfarm use, such as for home gardens, lawns, shrubbery, flowers, golf courses, parks, cemeteries, greenhouses or nurseries or for research or experimental purposes.

(m) “Official sample” means a sample of fertilizer taken by a representative of the department in accordance with methods prescribed by department rules.

(n) “Packaged fertilizer” means any type of fertilizer sold in closed containers.

(o) “Percent” and “percentage” mean the percentage by weight.

(p) “Plant nutrient” means boron, calcium, chlorine, copper, iron, magnesium, manganese, molybdenum, nitrogen, phosphorus or available phosphate, potassium or potash, sodium, sulfur, zinc or any other chemical element recognized as a plant nutrient by department rule.

(pm) “Sewage sludge” means the residue material resulting from the treatment of sewage. In this paragraph, “sewage” has the meaning specified in s. 281.01 (13).

(q) “Special-use fertilizer” means fertilizer designed and labeled for use in remedying nutrient deficiencies which are unique to certain crops or certain local areas.

(r) “Ton” means a net ton of 2,000 pounds avoirdupois.

(t) “Unmanipulated animal or vegetable manure” means animal or vegetable manure which has not been treated by mechanical drying, grinding or pelletizing, by adding a substance or by any other means.

(2) LABELING. (a) Any packaged fertilizer, including packaged custom mixed fertilizer, distributed in this state shall have placed on or affixed to the package a label setting forth in clearly legible and conspicuous form the following information:

1. Name and address of the licensed manufacturer or distributor.
2. Brand or product name.
3. Grade.
4. Guaranteed analysis.
5. Net weight.

(b) Any fertilizer distributed in this state in bulk shall be accompanied by a written or printed invoice or statement to be furnished to purchaser at time of delivery containing in clearly legible and conspicuous form the following information:

1. Name and address of the licensed manufacturer or distributor.
2. Name and address of the purchaser.
3. Date of sale.
4. Brand or product name.
5. Grade.
6. Guaranteed analysis.
7. Net weight.

(c) In lieu of grade and guaranteed analysis, custom mixed fertilizer sold in bulk may be labeled to show the weight and grade of each material in the mixture and total weight of the mixture. Grade shall be indicated if a grade is specified by the purchaser.

(d) All fertilizer in bulk storage shall be identified with a label attached to the storage bin or container giving the name or grade of the product.

(e) 1. Guaranteed analysis for the primary nutrients of nitrogen, phosphorus and potassium shall be expressed on the label in the following order and form:

Total Nitrogen (N)	%
Available Phosphate (P ₂ O ₅)	%
Soluble Potash (K ₂ O)	%

2. If elemental guarantees are required by department rule under sub. (9) (a), the guaranteed analysis shall be expressed in terms of percentage of available phosphorus and potassium.

3. Additional plant nutrients, besides nitrogen, phosphorus and potassium, claimed to be present in any form or manner shall be guaranteed on the elemental basis. Other beneficial substances or compounds, determinable by laboratory methods, may be guaranteed if approved by the department.

(3) FERTILIZER LICENSE. (a) 1. Except as provided in subd. 2., no person may manufacture or distribute fertilizer in this state without an annual license from the department. A separate license is required for each business location and each mobile unit at which the person manufactures fertilizer. A license shall expire on August 14 annually and is not transferable between persons or locations.

2. Notwithstanding subd. 1., a person who distributes only any of the following is not required to obtain a license under subd. 1.:

- a. Fertilizer materials to manufacturers for further manufacturing.
- b. Packaged fertilizer that is in its original container as packaged and labeled by the manufacturer or distributor.
- c. Bulk fertilizer that the person obtains for resale purposes from a licensed manufacturer or distributor and that is labeled as

required under sub. (2) (b) 1., 4., 5. and 6., with label information furnished by the licensed manufacturer or distributor.

(b) An applicant for a license under par. (a) shall submit an application on a form provided by the department. The application shall include information reasonably required by the department for licensing purposes. As part of the application, the applicant shall identify each business location or mobile unit that the applicant uses to manufacture fertilizer in this state. The application shall be accompanied by all applicable fees under sub. (3r).

(3m) NPK PERCENTAGE REQUIREMENT; EXEMPTION PERMITS.

(a) No person may distribute mixed fertilizer in which the sum of the guarantees for nitrogen, available phosphate and soluble potash totals less than 24% unless:

1. The mixed fertilizer is exempted from this requirement by department rule; or
2. The mixed fertilizer is a nonagricultural or special-use fertilizer and the person obtains a permit from the department authorizing its distribution as a nonagricultural or special-use fertilizer.

(b) An application for a permit under par. (a) 2. shall be on a form prescribed by the department and shall be accompanied by a proposed product label and a nonrefundable fee of \$25. The department may require that the applicant substantiate, by scientific evidence:

1. The efficacy and usefulness of the nonagricultural or special-use fertilizer if applied under conditions existing in this state at the amount and frequency recommended by the applicant.
2. The truth of any statement made in the proposed product label or in the permit application.

(c) 1. If the department finds that the applicant has fulfilled the requirements of par. (b), the department shall issue the permit.

2. If the department finds that the applicant has failed to meet the requirements of par. (b), the department shall issue a notice of denial of the permit.

(d) Any person who wishes to change the active ingredient contents or the recommended amount or frequency of application of a nonagricultural or special-use fertilizer for which the person has received a permit under par. (c), shall apply to the department for an amended permit. Paragraphs (b) and (c) apply to the issuance of amended permits.

(e) No person who has been issued a permit or amended permit under this subsection may:

1. Transfer the permit or amended permit to another person.
2. Distribute or promote the distribution of the nonagricultural or special-use fertilizer using any performance, use or efficacy claim which exceeds that allowed by the permit or amended permit or which is inconsistent with the approved product label.

(f) Issuance of a permit or amended permit under this subsection is neither an endorsement nor a warranty by the department.

(3r) LICENSE FEES AND SURCHARGES. (a) A person applying for a license under sub. (3) shall pay the following annual license fees:

1. For each business location and each mobile unit that the applicant uses to manufacture fertilizer in this state, \$30.
2. If the applicant distributes, but does not manufacture, fertilizer in this state, \$30.

(b) Beginning with the license year that begins on August 15, 2000, a person applying for a license under sub. (3) shall pay the following agricultural chemical cleanup surcharges, unless the department establishes lower surcharges under s. 94.73 (15):

1. For each business location and each mobile unit that the applicant uses to manufacture fertilizer in this state, other than a business location or mobile unit that is also licensed under s. 94.685 or 94.703, \$20.
2. If the applicant distributes, but does not manufacture, fertilizer in this state, \$20.

(c) The department shall deposit the license fees collected under par. (a) in the agrichemical management fund. The depart-

ment shall deposit the surcharges collected under par. (b) in the agricultural chemical cleanup fund.

(4) TONNAGE FEES AND SURCHARGES. (a) *Requirement.* Except as provided in par. (b), a person who is required to be licensed under sub. (3) and who sells or distributes fertilizer in this state shall pay to the department the following fees and surcharges on all fertilizer that the person sells or distributes in this state:

1. A basic fee of 23 cents per ton for fertilizer sold or distributed beginning on October 29, 1999, and ending on June 30, 2001, and 30 cents per ton for fertilizer sold or distributed after June 30, 2001, with a minimum fee of \$25.

2. A research fee of 10 cents per ton, with a minimum fee of \$1.

3. An additional research fee of 10 cents per ton, with a minimum fee of \$1.

4. A groundwater fee of 10 cents per ton, with a minimum fee of \$1.

5. An agricultural chemical cleanup surcharge of 63 cents per ton on all fertilizer that the person sells or distributes in this state after June 30, 2005, unless the department establishes a lower surcharge under s. 94.73 (15).

6. Beginning on October 29, 1999, a weights and measures inspection fee of 2 cents per ton, with a minimum fee of \$1.

(b) *Exemptions.* Paragraph (a) does not apply to any of the following:

1. Fertilizer sold or distributed to a manufacturer for use in the further manufacture or processing of fertilizer.

2. Fertilizer sold or distributed to a person licensed under sub. (3) (a), for resale by that person.

(c) *Use of fees and surcharges.* 1. The department shall deposit the fee under par. (a) 1. in the agrichemical management fund.

2. The department shall credit the fee under par. (a) 2. to the appropriation account under s. 20.115 (7) (h).

3. The department shall credit the fee under par. (a) 3. to the appropriation account under s. 20.285 (1) (hm).

4. The department shall deposit the fee under par. (a) 4. in the environmental fund for environmental management.

5. The department shall deposit the surcharge under par. (a) 5. in the agricultural chemical cleanup fund.

6. The department shall credit the fee under par. (a) 6. to the appropriation account under s. 20.115 (1) (j).

(5) TONNAGE REPORT AND FEE PAYMENT. (a) *Requirement.* A person who is required to pay fees or surcharges under sub. (4) shall do all of the following by August 14 annually:

1. File with the department a report that states the number of tons of each grade of fertilizer sold or distributed in this state during the 12 months ending on June 30 of that year on which the person is required to pay those fees or surcharges.

2. Pay the fees and surcharges under sub. (4) on the tonnage reported under subd. 1.

(b) *Extended deadline.* The department may extend the filing deadline under par. (a) for up to 30 days for cause, in response to a request filed before August 14.

(c) *Late payment.* If a person fails to pay a fee or surcharge when due under this section, the amount of the fee or surcharge is increased by \$10 or 10% of the amount that the fee or surcharge would have been if paid when due, whichever is greater.

(d) *Tonnage equivalents.* A tonnage report under par. (a) 1. shall report liquid fertilizer tonnage in terms of dry fertilizer tonnage equivalents, as prescribed by the department.

(e) *Audit.* The department may audit a tonnage report under par. (a) 1., including the records on which the tonnage report is based.

(6) RECORDS. A person who manufactures, sells or distributes fertilizer in this state shall keep records showing the grades and quantities of fertilizer manufactured, sold or distributed in this

state. The person shall keep the records relating to the 12 months covered by a report under sub. (5) (a) 1. for at least 24 months following the date of filing the report. The person shall make the records available to the department for inspection and copying upon request.

(6m) RECORDS CONFIDENTIAL. The department may not disclose information obtained under sub. (5) or (6) that reveals the grades or amounts of fertilizer sold or distributed by any person. This subsection does not prohibit the department from preparing and distributing aggregate information that does not reveal the grades or amounts of fertilizer sold or distributed by individual sellers or distributors.

(6p) SUMMARY LICENSE SUSPENSION. (a) The department may by written notice, without prior hearing, summarily suspend the license of any person who fails to file a report or pay a fee or surcharge as required under sub. (5).

(b) A summary license suspension under par. (a) takes effect on the date specified in the notice, which may be no sooner than 10 days after the date on which the notice is received by the recipient.

(c) A person whose license is suspended under par. (a) may request a meeting concerning the suspension. The department shall hold an informal meeting with the requester as soon as reasonably possible and not more than 10 days after the requester makes the request in writing, unless the requester agrees to a later date. If the matter is not resolved at the informal meeting, the requester may request a formal contested case hearing under ch. 227. A request for a hearing does not stay a summary suspension under par. (a).

(d) A person who is required to pay a fee or surcharge under sub. (5) remains obligated to pay the fee or surcharge regardless of whether the person continues to be licensed under this section.

(7) PROHIBITIONS. It is unlawful for any person:

(a) To distribute any fertilizer in violation of this section or rules promulgated under this section.

(b) To make any false, deceptive or misleading guarantee, claim or representation in connection with the distribution of fertilizer.

(c) To manufacture or distribute any fertilizer without a license required by sub. (3).

(d) To make any false or misleading statement in an application for a license or in any inspection fee or statistical report, or in any other statement or report filed with the department.

(8) INSPECTION, SAMPLING AND ANALYSIS. (a) The department shall inspect, sample and analyze fertilizer distributed within the state at such time and place and to such extent as is necessary to determine compliance with this section.

(b) The department may enter, at all reasonable times, any building, conveyance or premises used in the manufacture and distribution of fertilizer in this state to determine compliance with this section and to stop any conveyance transporting fertilizer for the purpose of inspecting and sampling the fertilizer and examining its labeling.

(c) Manufacturers or distributors of fertilizer shall submit to the department, on request, fertilizer samples, copies of labeling or any other data or information which the department requests concerning composition and claims and representations made for fertilizer manufactured or distributed by them in this state.

(8m) FERTILIZER RESEARCH FUNDS. (a) *Use of funds.* At the end of each fiscal year, the moneys collected under sub. (4) (a) 2. and s. 94.65 (6) (a) 3. shall be forwarded to the University of Wisconsin System to be used for research on soil management, soil fertility, plant nutrition problems and for research on surface water and groundwater problems which may be related to fertilizer usage; for dissemination of the results of the research; and for other designated activities tending to promote the correct usage of fertilizer materials.

(b) *Fertilizer research council.* The fertilizer research council shall recommend projects to be financed by fertilizer research funds. Members of the council shall meet at least annually to select projects to recommend for funding. The recommendations shall be made by majority vote of the council. If the University of Wisconsin System is unable to carry on the projected research, the council may recommend other appropriate nonprofit research institutions or agencies for receipt of funds.

(9) RULES. The department may promulgate rules:

(a) Requiring that the guaranteed analysis of phosphorus and potassium be expressed in the elemental form. If adopted, such rule shall not take effect prior to July 1, 1972, and shall provide for an additional period of at least 5 years during which both the oxide and the elemental guarantees for phosphorus and potassium may be given on the same label.

(b) Regulating the sale and labeling of fertilizer, including warning or caution statements or directions for use in connection with the labeling of fertilizer.

(c) Governing methods of sampling, testing, examining and analyzing fertilizer.

(d) Prescribing tolerances for deficiencies found in percentages of plant nutrient guaranteed to be present.

(e) Prescribing the manner in which grade and guaranteed analysis shall be declared on the label.

(f) Establishing standards of identity and purity for fertilizer materials.

(g) Prescribing standards for the exemption of mixed fertilizers from the requirement under sub. (3m) (a).

(h) Establishing standards and procedures to review an application for a permit or an amended permit for the distribution of a nonagricultural or special-use fertilizer under sub. (3m) (b).

(10) PUBLICATION. The department shall publish, at least annually, and in such form as it deems proper, information concerning the sales of fertilizers, together with other data on their production and use as it considers advisable, and a report of the results of the analyses based on official samples of fertilizers sold within the state compared with the analyses guaranteed on the product label. Information concerning the production and use of fertilizers shall be shown separately for the periods July 1 to December 31 and January 1 to June 30 of each year. No disclosure shall be made of the operations of any person.

(11) ENFORCEMENT. (a) *Stop sale orders.* The department may issue and enforce a written or printed stop sale order to the owner or custodian of any lot or container of fertilizer distributed in violation of this section or of rules promulgated under this section. The order shall prohibit the sale or removal of the fertilizer, except as authorized by the department, until it has been brought into compliance with the law or until a plan for disposition is agreed upon with the department in writing. The stop sale order shall have the effect of a special order under s. 93.18 and shall be subject to judicial review if, within 10 days after service of the order, a request for a hearing is made to the department.

(b) *Temporary holding orders.* A temporary holding order may be issued whenever the department has reason to believe any lot or container of fertilizer may not be in compliance with the law pending further evaluation or laboratory examination and analysis. A temporary holding order shall be effective for no more than 15 days but may be extended for an additional 15-day period as may reasonably be necessary to complete sampling, analysis and evaluation of the fertilizer and its labeling. The fertilizer shall be released prior to the expiration of such temporary period if found to be in compliance with the law. If found to be in violation of the law, the temporary holding order shall be extended by notice, in writing, to the owner or custodian and a stop sale order issued prohibiting the further movement or disposition of the fertilizer without consent of the department, subject to the right of hearing before the department if requested within 10 days after service of such notice and stop sale order.

(c) *Seizure, condemnation and sale.* Fertilizer not in compliance with this section shall be subject to seizure on complaint of the department to a court having jurisdiction. If the court finds that the fertilizer is in violation of this section and orders the seizure thereof, it shall be disposed of as the court directs. Disposition shall not be ordered by the court without first granting the owner or custodian, at his or her request, reasonable opportunity to reprocess or relabel the fertilizer under supervision of the department to bring it into compliance with this section.

(d) *Injunction.* Upon petition of the department any court having equity jurisdiction may grant a temporary or permanent injunction restraining any person from violating or continuing to violate this section or any rules thereunder notwithstanding the existence of other remedies at law.

(12) PENALTIES. (a) Any person who violates this section or any rule issued thereunder shall forfeit \$50 for the first violation and not less than \$200 nor more than \$500 for any subsequent violation. Any willful violation shall constitute a misdemeanor and any person convicted thereof shall be fined not less than \$250 nor more than \$5,000 or imprisoned in the county jail not more than one year or both.

(b) It is the duty of each district attorney to whom any violation is reported to cause appropriate actions or proceedings to be instituted for the collection of forfeitures or enforcement of other remedies. In any enforcement action the court may, in addition to other penalties provided in this subsection, order restitution to any party injured by the purchase of fertilizer sold in violation of the law. If the violator is convicted of a crime, restitution shall be in accordance with s. 973.20.

History: 1977 c. 418; 1981 c. 57; 1983 a. 189 ss. 121, 329 (20); 1983 a. 410; 1985 a. 147; 1987 a. 398; 1989 a. 31; 1991 a. 39, 112; 1993 a. 16, 417, 492; 1995 a. 4, 176, 227; 1997 a. 27; 1999 a. 9, 32; 2003 a. 33; 2005 a. 25.

Cross Reference: See also ch. ATPC 40, Wis. adm. code.

A local government is not preempted by s. 94.701 (3) (a) from regulating the phosphorus content in weed and feed products. A weed and feed product is both a pesticide, which under s. 94.701 (3) (a), only the state can regulate, and a fertilizer, which local government can regulate. The definition of both "pesticide" and "fertilizer" as including a mixture of the two preserves both state regulation of pesticides and local regulation of fertilizers. The state regulates the pesticide components of the mixed products, local government the fertilizer components. *Croplife America, Inc. v. City of Madison*, 432 F.3d 732 (2005).

94.645 Fertilizer and pesticide storage. (1) DEFINITIONS. In this section:

(a) "Bulk fertilizer" has the meaning specified under s. 94.64 (1) (b).

(b) "Bulk pesticide" means liquid pesticide in a container larger than 55 gallons or solid pesticide in undivided quantities greater than 100 pounds.

(c) "Distribute" means to import, consign, sell, offer for sale, solicit orders for sale or otherwise supply fertilizer or pesticide for sale or use in this state.

(d) "Fertilizer" has the meaning specified under s. 94.64 (1) (e), except that this term does not include anhydrous ammonia.

(e) "Manufacture" means to process, granulate, compound, produce, mix, blend or alter the composition of fertilizer or to manufacture, formulate, prepare, compound, propagate, package, label or process any pesticide.

(f) "Pesticide" has the meaning specified under s. 94.67 (25).

(g) "Waters of the state" has the meaning specified under s. 281.01 (18).

(2) STORAGE. (a) Except as provided in par. (b), every person who manufactures or distributes bulk fertilizer or bulk pesticides shall comply with the storage standards adopted under sub. (3).

(b) This section does not apply to containers for liquid pesticide larger than 55 gallons if the larger containers are designed for emergency storage of leaking containers which are 55 gallons or smaller and are used only for that purpose.

(3) RULES. The department shall adopt by rule standards for the storage of bulk fertilizer or bulk pesticides, for the purpose of protecting the waters of the state from harm due to contamination

by fertilizer or pesticides. The rule shall apply to all persons who manufacture or distribute bulk fertilizer or bulk pesticides. The rule shall comply with ch. 160. The rule may include different standards for new and existing facilities, but all standards shall provide substantially similar protection for the waters of the state.

(4) ENFORCEMENT. (a) The department shall enforce this section. The department may, by special order under s. 93.18, prohibit a violation of rules promulgated under this section and require necessary measures to correct the violation. Special orders may be issued on a summary basis, without prior complaint, notice or hearing, where necessary to protect public health or the environment. A summary special order is subject to a subsequent right of hearing before the department, if a hearing is requested within 10 days after the date on which the order is served. Any party affected by the special order may request a preliminary or informal hearing pending the scheduling and conduct of a full hearing. Hearings, if requested, shall be conducted as expeditiously as possible after receipt of a request for hearing. Enforcement of a summary special order shall not be stayed pending hearing, except as otherwise ordered by the department.

(b) The circuit court for any county where violation of such an order occurs has jurisdiction to enforce the special order by injunctive and other appropriate relief.

(5) PENALTIES. Any person who violates this section or any rule or order adopted under this section shall forfeit not less than \$10 nor more than \$1,000 for each violation. Each violation of this section or any rule or order under this section constitutes a separate offense and each day of continued violation is a separate offense.

History: 1983 a. 410; 1985 a. 135 s. 85; 1995 a. 227.

Cross Reference: See also chs. ATCP 31, 32, and 33, Wis. adm. code.

94.65 Soil and plant additives. (1) DEFINITIONS. In this section:

(a) “Active ingredient” means a component of a soil or plant additive from which the soil or plant additive derives all or part of its value or effectiveness and which is:

1. A living microorganism; or
2. Defined as an active ingredient by department rule.

(b) “Brand or product name” means a name, term, design or trademark which identifies the product.

(c) “Distribute” means to import, consign, sell, offer for sale, solicit orders for sale or otherwise supply for use in this state.

(d) “Inert ingredient” means a component of a soil or plant additive which does not affect the performance or efficacy of the soil or plant additive.

(e) “Label” means the display of written, printed or graphic matter which is attached to, or forms a part of, the immediate container of a soil or plant additive, or which accompanies a bulk distribution of soil or plant additive.

(em) “Sewage sludge” has the meaning specified in s. 94.64 (1) (pm).

(f) “Soil or plant additive” means any substance which is intended to be applied to seeds, soil or plants and which is designed for use or claimed to have value in promoting or sustaining plant growth; improving crop yield or quality; promoting or sustaining the fertility of the soil; or favorably modifying the structural, physical or biological properties of the soil for agricultural purposes. “Soil or plant additive” does not include:

1. Fertilizer, as defined in s. 94.64 (1) (e).
2. Liming material, as defined in s. 94.66 (1) (am), if the liming material is distributed solely for the purposes stated in s. 94.66 (1) (am).
3. Wood ashes or unmanipulated animal or vegetable manure, unless distributed under another name or description.
4. Pesticides registered under 7 USC 136 or by the department.
5. Any other substance exempted by department rule.

(g) “Unmanipulated animal or vegetable manure” has the meaning specified in s. 94.64 (1) (t).

(2) LICENSE. (a) Except as provided under par. (b), no person may manufacture or distribute a soil or plant additive in this state unless the person first obtains an annual license from the department. Application for a license or for renewal of a license shall be made on forms provided by the department and shall be accompanied by an annual license fee of \$25. All licenses expire on March 31.

(b) No license is required of a person who distributes a soil or plant additive of a license holder, if the person:

1. Distributes the soil or plant additive under the name of the license holder and in the original container packaged and labeled by the license holder; and

2. Makes no content or performance claim for the soil or plant additive other than the written claim of the license holder.

(3) PERMIT. (a) 1. Except as provided under subds. 2. and 3., no person may distribute a soil or plant additive in this state unless the person first obtains a permit from the department. A separate permit must be obtained for the distribution of each soil or plant additive.

2. No permit is required of a person who distributes a soil or plant additive for which a permit has been issued to a permit holder, if the person:

- a. Distributes the soil or plant additive under the name of the permit holder and in the original container packaged and labeled by the permit holder; and

- b. Makes no content or performance claim for the soil or plant additive other than the written claim of the permit holder.

3. No permit is required for the landspreading of sewage sludge under a pollutant discharge elimination system permit issued by the department of natural resources under s. 283.31 or 283.35.

(b) The applicant shall apply for a permit on a form provided by the department and shall submit with the application a proposed product label and a nonrefundable fee of \$100. The department may require that the applicant provide substantiation of application information under sub. (4). The department may also require the applicant to make affirmative label and advertising disclosures if, in the absence of the disclosures, the department determines that the label or advertising of a soil or plant additive is deceptive or misleading.

(c) 1. Except as provided in s. 93.135, if the department finds that the applicant has fulfilled the requirements of par. (b), the department shall issue a permit.

2. If the department finds that the applicant has failed to fulfill the requirements of par. (b), the department shall issue a notice of denial of the permit.

(d) 1. Any person who wishes to change the active ingredient contents or the recommended amount or frequency of application of a soil or plant additive for which the person has received a permit under par. (c) 1. shall apply to the department for an amended permit. Paragraphs (b) and (c) apply to the issuance of amended permits.

2. Any person who wishes to revise the label of a soil or plant additive for which the person has received a permit under par. (c) 1., including a label revision which does not necessitate the issuance of an amended permit, shall file the revised label with the department prior to distributing the soil or plant additive bearing the revised label.

(e) No person who has been issued a permit or amended permit under this subsection may:

1. Transfer the permit or amended permit to another person.
2. Distribute or promote the distribution of the soil or plant additive using any performance, use or efficacy claim which exceeds that allowed by the permit or amended permit or which is inconsistent with the approved product label.

(f) Issuance of a permit or amended permit under this subsection is neither an endorsement nor a warranty by the department.

(4) SUBSTANTIATION REQUIREMENTS. (a) As a condition to the issuance of a permit or amended permit under sub. (3), the department may require that the applicant substantiate, by scientific evidence:

1. The efficacy and usefulness of the soil or plant additive if applied under conditions existing in this state at the amount and frequency recommended by the applicant.

2. The truthfulness of any statement made on the proposed soil or plant additive label or in a permit or amended permit application.

(b) The department may require that the substantiation under par. (a) 1. include replicable results of controlled experimental studies using the soil or plant additive, the names and qualifications of the researchers performing the studies and a complete description of the conditions and procedures of the studies.

(c) The department may request assistance from the University of Wisconsin–Madison College of Agricultural and Life Sciences in evaluating any substantiating evidence required under this subsection.

(5) LABEL. Every soil or plant additive distributed in this state shall be clearly and conspicuously labeled with the following information:

(a) The name and address of the permit holder under sub. (3).

(b) The brand or product name of the soil or plant additive.

(c) The net weight or liquid measure of the soil or plant additive contained in the package, container or bulk shipment to which the label refers.

(d) The specific purpose or use for which the soil or plant additive is claimed to be effective.

(e) Complete directions for use of the soil or plant additive, including the recommended amount and frequency of application.

(f) A guaranteed analysis of the contents of the soil or plant additive which shall include:

1. The name and percentage by weight of each active ingredient, listed under the heading “ACTIVE INGREDIENTS”. For microbiological products, the statement of active ingredients shall state the number and kind of viable microorganisms per milliliter of liquid product, or per gram of nonliquid product.

2. The name and percentage by weight of each inert ingredient, listed under the heading “INERT INGREDIENTS”.

(g) Any other information required by department rule.

(6) FEES, REPORTS AND RECORDS. (a) Each person holding a permit for the distribution of a soil or plant additive under sub. (3) shall:

1. Annually by March 31, file with the department a tonnage report setting forth the number of tons of each soil or plant additive distributed during the preceding year by that person or by any other person authorized under sub. (3) (a) 2. to distribute under the name of that person and pay to the department a fee of 25 cents per ton so distributed. The minimum total fee is \$25.

2. Maintain, for 2 years following the date the tonnage report required under subd. 1. is filed, distribution records upon which the tonnage report is based. The permit holder shall make the distribution records available for inspection, copying and audit by the department upon request.

3. Annually by March 31, pay to the department a research fee of 10 cents for each ton of soil or plant additive distributed as described in the tonnage report filed under subd. 1. The minimum research fee is \$1 for 10 tons or less. The department shall credit this fee to the appropriation account under s. 20.115 (7) (h).

4. Annually by March 31, pay to the department a groundwater fee of 10 cents for each ton of soil or plant additive distributed, as described in the tonnage report filed under subd. 1. The minimum groundwater fee is \$1 for 10 tons or less. All groundwater fees shall be credited to the environmental fund for environmental management.

(b) If by March 31 a person holding a permit under sub. (3) has failed to file a tonnage report or to pay the inspection fee required under par. (a), the department may summarily suspend or revoke the permit or license issued under this section. A penalty of 10% of the inspection fee due shall be assessed against the permit holder for all inspection fees not paid when due. The minimum total penalty is \$10. An unpaid inspection fee or penalty shall constitute a debt owed the department by the permit holder until paid. The department may not issue or renew a license or issue a permit or amended permit to a person owing an unpaid inspection fee or penalty.

(c) The department shall deposit fees collected under pars. (a) 1. and (b) and subs. (2) (a) and (3) (b) in the agrichemical management fund.

(7) PROHIBITIONS. No person may:

(a) Distribute a soil or plant additive in violation of this section or of rules promulgated under this section.

(b) Distribute a soil or plant additive which is toxic or injurious to plants when applied according to label directions.

(c) Make, in connection with the distribution or promotion of a soil or plant additive, any false, deceptive or misleading claim, representation or label statement.

(d) Make, in connection with the distribution or promotion of a soil or plant additive, any performance, use or efficacy claim:

1. Which exceeds the authorization of a permit issued for distribution of the soil or plant additive under this section;

2. Which is inconsistent with the product label; or

3. Without having scientific substantiation for the claim at the time the claim is made.

(e) Make any false, deceptive or misleading statement in a permit application or in a report or other document submitted to the department under this section.

(f) Distribute a soil or plant additive under a label which has not been filed with the department.

(g) Imply or directly state that the department endorses or warrants the efficacy of a soil or plant additive.

(8) INSPECTION, SAMPLING AND ANALYSIS. (a) The department may inspect, sample and analyze a soil or plant additive distributed in this state and investigate possible violations of this section and of rules promulgated under this section.

(b) The department may enter at all reasonable times any building, conveyance or premises used in the manufacture or distribution of soil or plant additives in this state to inspect or sample a soil or plant additive.

(c) Upon request of the department, a distributor of a soil or plant additive shall provide the department with a product sample, copy of advertising or label or any other data or information concerning the composition of the soil or plant additive or concerning any claim or representation made in connection with the soil or plant additive.

(9) RULES. The department may promulgate rules to implement and administer this section.

(10) ENFORCEMENT. (a) *Temporary holding order.* 1. If the department has reasonable cause to believe that a soil or plant additive is being distributed in this state in violation of this section or of rules promulgated under this section, the department may serve a written order upon the owner or custodian of the soil or plant additive, temporarily prohibiting the distribution or movement of the product, pending further inspection, sampling or laboratory analysis. No person may distribute or move for any purpose the soil or plant additive described in the temporary holding order while the order is in effect unless the department has approved the distribution or movement.

2. The temporary holding order remains in effect for 60 days after the date of service, unless the order is terminated earlier by the department under subd. 3.

3. If the department determines that the distribution of the soil or plant additive does not violate this section or rules promulgated

under this section, the department shall promptly terminate the temporary holding order by giving written notice to the owner or custodian.

(b) *Extended holding order.* 1. If the department determines that the distribution of the soil or plant additive is in violation of this section or of rules promulgated under this section, the department may extend the order by serving written notice on the owner or custodian of the soil or plant additive. No person may distribute, move or dispose of the soil or plant additive described in the extended holding order unless the department has approved the distribution, movement or disposition.

2. An extended holding order remains in effect until the department and the owner or custodian of the soil or plant additive have agreed on conditions of final disposition of the soil or plant additive or until the department authorizes or directs other disposition.

(c) *Right to hearing.* Holding orders under pars. (a) and (b) are subject to a right of hearing before the department if a request for hearing is made within 10 days after the date of service of the notice of the temporary or extended holding order.

(d) *Injunction.* Upon petition of the department, any court having equity jurisdiction may grant an injunction or order under s. 813.025 (2) for any violation of this section or of rules promulgated under this section.

(11) PENALTIES. (a) Any person who violates this section or a rule promulgated under this section shall forfeit not more than \$500 for each violation.

(b) Any person who willfully violates this section shall be fined not more than \$5,000 or imprisoned not more than one year in the county jail or both. Restitution shall be in accordance with s. 973.20, except that an injured party shall receive the amount determined under s. 973.20 plus \$50.

(12) DAMAGES. Any person suffering damages because of a violation of this section by another person may sue for damages in any court of competent jurisdiction and may recover twice the amount of the proven loss, together with costs including reasonable attorney fees, notwithstanding s. 814.04 (1).

History: 1985 a. 147; 1987 a. 398; 1989 a. 31; 1991 a. 39, 112; 1993 a. 16; 1995 a. 176, 227; 1997 a. 27, 191.

94.66 Sale of agricultural lime; license; penalty.

(1) Unless the context requires otherwise:

(am) “Liming material” means any material which contains calcium or calcium and magnesium compounds, is capable of neutralizing soil acidity and is manufactured, sold or distributed for the purpose of neutralizing soil acidity or liming barns. “Liming material” includes any form of limestone, quicklime, hydrated lime, marl, paper mill refuse lime, blast furnace slag or mine tailings.

(b) “Person” means an individual, firm, association, limited liability company, corporation or county.

(2) No person may engage in the business of selling or distributing liming material in this state without first obtaining a license therefor from the department unless the person is engaged in the business of selling or distributing such product produced by another already licensed to do business under this section.

(3) Application for license shall be made upon forms furnished upon request by the department and shall state the applicant’s name and business address, the exact location of places of manufacture of the applicant’s products, a description of the products that are to be sold, and any other information that the department requires. An application may be amended upon written notice from the applicant.

(4) Each application shall be accompanied by a fee of \$10.

(5) Licenses to engage in the selling or distribution of liming material shall expire on December 31 next following date of issue.

(6) (a) Every person engaged in the business of selling or distributing liming material shall furnish each purchaser on final

delivery of a lot or order of liming material a written statement showing total amount delivered in tons and the grade thereof as defined in par. (b). A written statement setting forth the grade of the liming material being transported shall accompany each vehicle when making delivery. All liming material shall be distributed on a scale weight basis, except that where no weighing facilities are readily available and on prior approval of the department, liming materials may be distributed by volume if each vehicle transporting liming materials is accurately and conspicuously marked to show cubic yard capacity from which the seller must guarantee a ton weight equivalent based on rules established by the department. This paragraph does not apply to marl or paper mill refuse lime as these materials are distributed on an equivalent cubic yard basis as prescribed by department rule.

(b) 1. “Neutralizing index” means the effectiveness of liming material to change soil acidity expressed as a whole number calculated by the following method. The summation of the following 3 quantities is obtained:

a. The percentage of material passing a U.S. standard 8 mesh sieve, but retained by a U.S. standard 20 mesh sieve is multiplied by 0.2;

b. The percentage of material passing a U.S. standard 20 mesh sieve, but retained by a U.S. standard 60 mesh sieve is multiplied by 0.6; and

c. The percentage of material passing a U.S. standard 60 mesh sieve is multiplied by 1.0.

2. This summation is multiplied by the calcium carbonate equivalent of the liming material under consideration to obtain the neutralizing index. The formula is: Neutralizing index = [(%8–20 mesh × 0.2) + (%20–60 mesh × 0.6) + (%finer than 60 mesh × 1.0)] × % calcium carbonate equivalent.

3. “Index zones” means the classification of liming material into numerical ranges of neutralizing indexes.

(c) All weights as called for under par. (a) shall be expressed on the basis of not more than 8% of moisture. For the purposes of the specifications in par. (b), “calcium carbonate equivalent” means the acid neutralizing capacity of oven-dried material expressed as the percentage by weight of calcium carbonate. In addition to the grade designation, the actual screen analysis and neutralizing value may be given. Any misleading representation on the written statement of guarantee is unlawful.

(7) The department shall enforce this section by inspectors, chemical analyses and other appropriate methods and for such purposes employees and agents of the department shall have free access during business hours to all places of business, buildings and vehicles used in the manufacture, transportation, sale or storage of liming material.

(8) Except as provided in s. 93.135, the department may revoke a license, after reasonable notice, only for willful failure to comply with any of the provisions of this section and in the event the license is revoked the licensee may have the order of revocation reviewed by the circuit court of the county wherein the producing plant is located and the review by the court shall be of all questions therein whether of fact or law; any such appeal must be taken within 20 days of the date of the service of the order of revocation upon the licensee.

(9) A fee of one and one-quarter cent per ton on all liming materials, or the equivalent amount on marl and paper mill refuse lime, sold within the state, with a minimum fee of \$1 shall be paid annually, for the preceding calendar year, on or before February 1 each year to the department by the licensee. These fees shall be used for research on liming materials or crop response thereto by the University of Wisconsin–Madison College of Agricultural and Life Sciences, for the dissemination of the results of such research, and for other activities that will tend to promote the correct usage of liming materials. In case the University of Wisconsin–Madison College of Agricultural and Life Sciences is

unable to carry on the recommended program the department may contract with another appropriate institution or agency.

History: 1973 c. 335 s. 12; 1977 c. 29; 1983 a. 318; 1985 a. 147; 1993 a. 112, 492; 1997 a. 191; 1999 a. 83; 2001 a. 107.

Cross Reference: See also s. [ATCP 41.07](#), Wis. adm. code.

94.67 Pesticides; definitions. In ss. [94.67](#) to [94.71](#):

- (1) “Active ingredient” means any ingredient which will:
- Prevent, destroy, repel or mitigate pests;
 - Accelerate or retard the rate of growth or rate of maturation or otherwise alter the behavior of ornamental or crop plants or the product of the plants through physiological action;
 - Cause the leaves or foliage to drop from a plant; or
 - Artificially accelerate the drying of plant tissue.
- (2) “Agricultural commodity” means any plant or part of a plant, animal or animal product produced by a person primarily for sale, consumption, propagation or other use by humans or animals.
- (3) “Animal” means all vertebrate and invertebrate species, including but not limited to persons and other mammals, birds, fish and shellfish.
- (3m) “Business location” means any place from which a commercial application business operates on a regular basis as a commercial applicator for hire, except that it does not include a motor vehicle that contains a mobile telephone unit which is used to take pesticide application orders.
- (4) “Certified applicator” means a private applicator certified by the department to use restricted–use pesticides or a commercial applicator certified by the department to use or direct the use of pesticides under s. [94.705](#).
- (5) (a) “Commercial application business” means a corporation, a limited liability company, a cooperative association, an unincorporated cooperative association, a partnership, a natural person doing business as a sole proprietor or other nongovernmental business entity that does either of the following:
- Operates as a commercial applicator for hire.
 - Uses or directs the use of a restricted–use pesticide as a commercial applicator, either directly or through an employee.
- (b) “Commercial application business” does not include a veterinary clinic that uses or directs the use of a pesticide if the pesticide is used or directed to be used only by a veterinarian or veterinary technician while lawfully practicing within the scope of his or her license or certificate.
- (6) “Commercial applicator” means a person, whether or not a private applicator with respect to some uses, who uses or directs the use of any pesticide, either directly or through an employee, for any purpose or on any property other than as a private applicator. “Commercial applicator” does not include:
- A person who applies a pesticide, other than a restricted–use pesticide, solely for household purposes in and around the person’s residence.
 - A person who contracts with a commercial applicator for hire to apply a pesticide for the person, if the person does not otherwise use or direct the use of a pesticide as a commercial applicator.
 - A veterinarian or veterinary technician who uses or directs the use of a pesticide only while lawfully practicing within the scope of his or her license or certificate.
- (7) “Commercial applicator for hire” means a commercial applicator who uses or directs the use of a pesticide as an independent contractor for hire, either directly or through an employee. “Commercial applicator for hire” does not include a provider of janitorial, cleaning or sanitizing services if the provider of the services uses no pesticides other than sanitizers, disinfectants and germicides, or a veterinarian or veterinary technician who uses a pesticide only while lawfully practicing within the scope of his or her license or certificate.

(8) “Dealer” means a person engaged in the sale of pesticides to consumers.

(9) “Defoliant” means any pesticide labeled, designed or intended for use in causing the leaves or foliage to drop from a plant with or without causing abscission.

(10) “Desiccant” means a pesticide labeled, designed or intended for use in artificially accelerating the drying of plant tissue.

(10m) “Directs the use” means to select a pesticide for use by another person or to instruct or control the application of a pesticide by another person and to be available if and when needed during that application. “Directs the use” may, but does not necessarily, mean to be physically present at the time and place a pesticide is being applied.

(11) “Distributor” means a person engaged in the sale of pesticides for resale and includes a person who sells at wholesale or retail.

(12) “Environment” includes water, air, land and all plants and persons and other animals living in or on the water, air or land and the interrelationships which exist among them.

(13) “Federal act” means the federal insecticide, fungicide, and rodenticide act, as amended ([7 USC 136](#) et. seq.) and regulations issued under that act.

(14) “Fungus” means any non–chlorophyll–bearing plant of a lower order than mosses and liverworts (thallophyte), including but not limited to rusts, smuts, mildews, molds and yeasts except those on or in persons or other animals and those on or in processed food, beverages or pharmaceuticals.

(15m) (a) “Individual commercial applicator” means a natural person who does any of the following:

- Personally uses or directs the use of any pesticide as a commercial applicator for hire, or as an employee of a commercial applicator for hire. This subdivision does not apply to a person performing janitorial, cleaning or sanitizing services if the person uses no pesticides other than sanitizers, disinfectants and germicides.
- Personally uses a restricted–use pesticide as a commercial applicator.
- Directs the use of a pesticide by a person specified under subd. [1.](#) or [2.](#)

(b) “Individual commercial applicator” does not include a veterinarian or veterinary technician who uses or directs the use of a pesticide only while lawfully practicing within the scope of his or her license or certificate.

(16) “Inert ingredient” means an ingredient which is not an active ingredient.

(17) “Ingredient statement” means a statement which contains the name and percentage of each active ingredient and the total percentage of all inert ingredients in the pesticide; and if the pesticide contains arsenic in any form, a statement of the percentages of total and water soluble arsenic, calculated as elementary arsenic.

(18) “Insect” means any of the numerous small invertebrate animals generally having the body segmented, usually belonging to the class insecta, comprising 6–legged, usually winged forms, including but not limited to beetles, bugs, bees and flies and other allied classes of arthropods whose members are wingless and usually have more than 6 legs, including but not limited to spiders, mites, ticks, centipedes and wood lice.

(19) “Label” means the written, printed, or graphic matter on, or attached to, the pesticide or any of its containers or wrappers.

(20) “Labeler” means a person who affixes his or her label to the pesticide or any of its containers or labeling.

(21) “Labeling” means all labels and all other written, printed or graphic matter accompanying the pesticide at any time or the matter to which reference is made on the label or in literature accompanying the pesticide, except current official publications

of state agricultural colleges, experiment stations and extension services or any other state or federal agency authorized by law to conduct research in the field of pesticides.

(21m) “Licensee” means a person required to obtain a license under s. 94.68, 94.685, 94.703 or 94.704.

(22) “Nematode” means invertebrate animals of the phylum nemathelminthes and class nematoda, consisting of unsegmented worms with elongated fusiform or saclike bodies covered with cuticle and inhabiting soil, water, plants or plant parts. Nematodes may also be called nemas or eelworms.

(23) “Person of limited English language ability” means a person whose ability to use the English language is limited because of the use of a non-English language in his or her family or in his or her daily surroundings and who has difficulty performing in English as a result of limited English language ability.

(24) “Pest” means any insect, rodent, nematode, fungus, weed or any other form of terrestrial or aquatic plant or animal life or virus, bacteria or other micro-organism, except viruses, bacteria or other micro-organisms on or in living persons or other living animals, declared to be a pest under the federal act or rules of the department.

(25) “Pesticide” means any substance or mixture of substances labeled or designed or intended for use in preventing, destroying, repelling or mitigating any pest, or as a plant regulator, defoliant or desiccant.

(25m) “Pesticide product” means a pesticide, all of the containers in commerce of which are labeled with a unique combination of all of the following:

- (a) The brand name.
- (b) The pesticide registration number assigned to the pesticide under the federal act.
- (c) The name of the pesticide labeler.

(26) “Plant regulator” means any pesticide labeled or designed or intended for use, through physiological action, in accelerating or retarding the rate of growth or maturation, or for otherwise altering the behavior of plants or the produce of the plant, but does not include substances to the extent labeled or designed or intended for use as plant nutrients, trace elements, nutritional chemicals, plant inoculants and soil amendments. The term also excludes nutrient mixtures or soil amendments commonly known as vitamin-hormone horticultural products intended for improvement, maintenance, survival, health and propagation of plants, if they are not labeled, designed or intended for use for pest destruction and are nontoxic and nonpoisonous in the undiluted packaged concentration.

(26m) “Private applicator” means a person who uses or directs the use of any pesticide for the purpose of producing any agricultural commodity on property owned or rented by the person or the person’s employer, or on property of another person if the pesticide is used without compensation other than the trading of goods or services between producers of agricultural commodities on an exchange basis. “Private applicator” does not include a veterinarian or veterinary technician who uses a pesticide only while lawfully practicing within the scope of his or her license or certificate.

(27) “Produce” or “manufacture” means to manufacture, formulate, prepare, compound, propagate, package, label or process any pesticide.

(28) “Producer” or “manufacturer” means the person who produces or manufactures any pesticide.

(29) “Protect health and the environment” means protection against any unreasonable adverse effects on the environment.

(30) “Registrant” means a person who has registered any pesticide under the federal act or rules of the department.

(31) “Restricted-use pesticide” means a pesticide for which certain or all of its uses are classified as being for restricted use under the federal act.

(33) “Unreasonable adverse effects on the environment” means unreasonable risk to persons or the environment, taking into account the economic, social and environmental costs and benefits of the use of any pesticide.

(33m) “Veterinarian” means an individual who is licensed as a veterinarian under ch. 453.

(33t) “Veterinary technician” means an individual who is certified as a veterinary technician under ch. 453.

(34) “Weed” means any plant which grows where not wanted.
History: 1975 c. 94 s. 91 (10); 1977 c. 106, 273; 1985 a. 135; 1987 a. 27; 1989 a. 279; 1993 a. 16, 112; 1995 a. 321; 2005 a. 441.

Cross Reference: See also chs. ATCP 29, 30, and 31 and ss. ATCP 160.19 and 160.21, Wis. adm. code.

94.675 Pesticides; adulteration. A pesticide is adulterated:

(1) If its strength, quality, purity or effectiveness falls below the standards expressed on the label.

(2) If any substance has been substituted wholly or in part for the articles.

(3) If any valuable constituent of the article has been wholly or in part abstracted.

(4) If it does not bear an identifying label or it does not conform to the name or description of ingredients given on the label.

History: 1999 a. 83.

Cross Reference: See also chs. ATCP 29, 30, and 31 and ss. ATCP 160.19 and 160.21, Wis. adm. code.

94.676 Pesticides; misbranding. A pesticide is misbranded if:

(1) Its labeling bears any statement, design or graphic representation relative to the pesticide, or to its ingredients, which is false or misleading in any particular.

(2) It is an imitation of, or is offered for sale under, the name of another pesticide.

(3) It is contained in a package or other container or wrapping which does not conform to the standards established under the federal act or rules of the department.

(4) Its label does not bear the registration number assigned to each establishment in which it was produced as required under the federal act or rules of the department.

(5) Any word, statement or other information required under the authority of the federal act or ss. 94.67 to 94.71 to appear on the label or labeling is not prominently placed on the label or labeling with conspicuousness, compared with other words, statements, designs or graphic matter in the labeling, and in terms so as to render it likely to be read and understood by the ordinary person under customary conditions of purchase and use.

(6) The labeling does not contain directions or instructions for use which are necessary for effecting the purpose for which the product is intended and which, if complied with, are adequate to protect health and the environment.

(7) The label does not contain a warning or caution statement which may be necessary and which, if complied with, is adequate to protect health and the environment.

(8) The label does not bear an ingredient statement on that part of the immediate container which is presented or displayed under customary conditions of purchase and on the outside container or wrapper of the retail package, if there is one, through which the ingredient statement on the immediate container cannot be clearly read, except that a pesticide is not misbranded under this subsection if:

(a) The size or form of the immediate container, or the outside container or wrapper of the retail package, makes it impracticable to place the ingredient statement on the part which is presented or displayed under customary conditions of purchase; and

(b) The ingredient statement appears prominently on another part of the immediate container, or outside container or wrapper, when authorized under the federal act.

(9) The labeling does not contain a statement of the use classification under which the pesticide is registered under the federal act or rules of the department.

(10) There is not affixed to its container and to the outside container or wrapper of the retail package, if any, through which the required information on the container can be read clearly, a label bearing:

- (a) The name and address of the producer, registrant or person for whom produced;
- (b) The name, brand or trademark under which the pesticide is sold;
- (c) The net weight or measure of the contents subject to variations as authorized under state or federal law; and
- (d) The registration number and use classification assigned to the pesticide when required under the federal act.

(11) The pesticide contains any substance or substances in quantities highly toxic to persons, unless the label bears, in addition to other required labeling:

- (a) The sign of the “skull and crossbones”;
- (b) The word “POISON” prominently in red on a background of distinctly contrasting color; and
- (c) An antidote statement of a practical treatment, first aid or otherwise, in case of pesticide poisoning.

(12) Its labeling contains statements, claims or directions for use which, if complied with, would violate any laws of this state or the federal act relating to the sale or use of pesticides.

History: 1975 c. 94 s. 91 (10); 1977 c. 106.

Cross Reference: See also chs. ATCP 29, 30, and 31 and ss. ATCP 160.19 and 160.21, Wis. adm. code.

94.68 Pesticides; licensing of manufacturers and labelers. (1) No person may manufacture, formulate, package, label or otherwise produce pesticides for sale or distribution in this state, or sell or offer to sell pesticides to purchasers in this state, whether or not the sales are made wholly or partially in this state or another state, without a license from the department. A license expires on December 31 annually and is not transferable. No license is required of persons engaged only in the following:

- (a) The sale or distribution of pesticides at wholesale or retail in the immediate, unbroken container of licensed manufacturers as manufactured, produced, packaged or labeled by them.
- (b) The sale of pesticides or active ingredients to licensed manufacturers for use as a basic ingredient in the manufacture or formulation of another pesticide or for further processing, packaging or labeling.
- (c) The blending of fertilizer–pesticide mixtures in accordance with the registered pesticide label at the customer’s request for use on property owned, rented or controlled by the customer, or blending mixtures according to registered pesticide label uses for custom application by the blender. The mixtures may not be resold or redistributed.
- (d) The sale or application, as certified commercial applicators of pesticides or pesticide–fertilizer mixtures, mixed or blended by them for their own use in the commercial application of pesticides if the pesticides used for mixing and blending were obtained from a licensee under this section.

(2) (a) An application for a license under sub. (1) shall be made on a form prescribed by the department. An applicant shall submit all of the following with the application:

1. All fees and surcharges required under s. 94.681.
2. A report identifying each pesticide that the applicant sells or distributes for use in this state and the gross revenue that the applicant derived from the sale or distribution of each pesticide during the preceding year, as defined in s. 94.681 (1) (d).

(b) The department may not disclose sales revenue information obtained under par. (a) 2.

(3) At least 15 days before a person holding a license under this section begins to sell or distribute for use in this state a pesticide product that was not identified in the person’s most recent

annual license application, the person shall file a supplementary report with the information required under sub. (2) (a) 2. and any fees and surcharges required under s. 94.681. The department may not disclose sales revenue information obtained under this subsection.

(5) Manufacturers or labelers of pesticides shall submit to the department on request, product samples, copies of labeling or any other data or information which the department requests concerning composition and claims and representations made for pesticides manufactured or labeled by them in this state.

(6) The department may require a person licensed under sub. (1) to submit to the department any information which is needed in the administration of ss. 94.67 to 94.71 or ch. 160. The licensee may designate any information submitted under this subsection as a trade secret as defined in s. 134.90 (1) (c). The department may require the licensee to substantiate that the information is in fact a trade secret. Any information which the department determines to be a trade secret shall be kept confidential by the department. The department may enter into agreements with any person to allow for the review of trade secret information if the department ensures that the trade secret information will be kept confidential. The department may require a licensee to submit a summary of trade secret information for the purpose of providing information to the public.

(7) A license under this section does not constitute a registration of individual pesticide products within the meaning of the federal act, nor does it authorize any pesticide sale or distribution otherwise prohibited by law.

History: 1977 c. 106; 1983 a. 410; 1985 a. 236; 1987 a. 27; 1989 a. 31; 1991 a. 39, 112; 1993 a. 16; 1997 a. 27.

Cross Reference: See also chs. ATCP 29, 30, and 31 and NR 80 and ss. ATCP 160.19 and 160.21, Wis. adm. code.

94.681 Pesticide manufacturers and labelers: fees and surcharges. (1) **DEFINITIONS.** In this section:

(a) “Household pesticide” means a pesticide that is any of the following:

1. A sanitizer.
2. A disinfectant.
3. A germicide.
4. An insect repellent that is applied to the human body or to clothing.
5. A pesticide that is used exclusively for the treatment of household pets.
6. A pesticide product that is labeled exclusively for household, lawn or garden use if the product either is sold in ready-to-use form or is sold exclusively in container sizes of less than one gallon.
7. A solid or liquid pesticide product that is used exclusively for the treatment of swimming pools, spas or hot tubs.

(b) “Industrial pesticide” means a pesticide that is not a household pesticide and that is one of the following:

1. Solely labeled for use on wood and contains pentachlorophenol, coal tar creosote or inorganic arsenical wood preservatives.
2. Labeled for use in controlling algae, fungi, bacteria, other microscopic organisms or mollusks in or on one or more of the following and for no other use except for a use described in par. (a) 6. or 7.:
 - a. Textiles, paper, leather, plastic, vinyl or other synthetic materials, metal or rubber.
 - b. Paints, varnishes, other coating products, lubricants or fuels.
 - c. Commercial, construction, manufacturing or industrial fluids, including adhesives, additives and pigments.
 - d. Commercial, construction, manufacturing or industrial processes, equipment, devices or containers, other than those used in the production or storage of human food or animal feed.
 - e. Air washing, cooling or heat transfer systems.

- f. Medical equipment.
 - g. Drinking water or wastewater systems.
- (c) “Nonhousehold pesticide” means a pesticide that is not a household pesticide or an industrial pesticide.
- (cm) “Payment period” means the 12 months ending on September 30 of the calendar year for which a license is sought under s. 94.68.
- (d) “Preceding year” means the 12 months ending on September 30 of the year immediately preceding the year for which a license is sought under s. 94.68.
- (e) “Primary producer” means a person who manufactures an active ingredient that is used to manufacture or produce a pesticide.

(2) ANNUAL LICENSE FEE. An applicant for a license under s. 94.68 shall pay an annual license fee for each pesticide product that the applicant sells or distributes for use in this state. The amount of the fee is based on sales of pesticide products during the payment period. An applicant shall pay an estimated fee before the start of each license year as provided in sub. (3s) (a) and shall make a fee adjustment payment before the end of the license year if required under sub. (3s) (b). Except as provided in sub. (5) or (6), the fee for each pesticide product is as follows:

- (a) For each household pesticide product:
 1. If the applicant sells less than \$25,000 of the product during the payment period for use in this state, \$265.
 2. If the applicant sells at least \$25,000 but less than \$75,000 of the product during the payment period for use in this state, \$750.
 3. If the applicant sells at least \$75,000 of the product during the payment period for use in this state, \$1,500.
- (b) For each industrial pesticide product:
 1. If the applicant sells less than \$25,000 of the product during the payment period for use in this state, \$315.
 2. If the applicant sells at least \$25,000 but less than \$75,000 of the product during the payment period for use in this state, \$860.
 3. If the applicant sells at least \$75,000 of that product during the payment period for use in this state, \$3,060.
- (c) For each nonhousehold pesticide product:
 1. If the applicant sells less than \$25,000 of that product during the payment period for use in this state, \$320.
 2. If the applicant sells at least \$25,000 but less than \$75,000 of the product during the payment period for use in this state, \$890.
 3. If the applicant sells at least \$75,000 of the product during the payment period for use in this state, \$3,060 plus 0.2% of the gross revenues from sales of the product during the payment period for use in this state.

(3) NONHOUSEHOLD PESTICIDES; CLEANUP SURCHARGE. An applicant for a license under s. 94.68 shall pay an agricultural chemical cleanup surcharge for each nonhousehold pesticide product that the applicant sells or distributes for use in this state. The amount of the surcharge is based on sales of nonhousehold pesticide products during the payment period. An applicant shall pay an estimated surcharge before the start of each license year as provided in sub. (3s) (a) and shall make a surcharge adjustment payment before the end of the license year if required by sub. (3s) (b). Except as provided in sub. (6) or under s. 94.73 (15), the amount of the surcharge is as follows:

- (a) If the applicant sells less than \$25,000 of the product during the payment period for use in this state, \$5.
- (b) If the applicant sells at least \$25,000 but less than \$75,000 of that product during the payment period for use in this state, \$170.
- (c) If the applicant sells at least \$75,000 of that product during the payment period for use in this state, an amount equal to 1.1%

of gross revenues from sales of the product during the payment period for use in this state.

(3m) WOOD PRESERVATIVES; CLEANUP SURCHARGE. An applicant for a license under s. 94.68 shall pay an environmental cleanup surcharge for each pesticide product that is not a household pesticide and is solely labeled for use on wood and contains pentachlorophenol or coal tar creosote that the applicant sells or distributes in this state. The amount of the surcharge is based on sales of pesticide products that are not household pesticides and are solely labeled for use on wood and contain pentachlorophenol or coal tar creosote during the payment period. An applicant shall pay an estimated surcharge before the start of each license year as provided in sub. (3s) (a) and shall make a surcharge adjustment payment before the end of the license year if required by sub. (3s) (b). Except as provided in sub. (6), the amount of the surcharge is as follows:

- (a) If the applicant sells less than \$25,000 of the product during the payment period for use in this state, \$5.
- (b) If the applicant sells at least \$25,000 but less than \$75,000 of that product during the payment period for use in this state, \$170.
- (c) If the applicant sells at least \$75,000 of that product during the payment period for use in this state, an amount equal to 1.1% of gross revenues from sales of the product during the payment period for use in this state.

(3s) PAYMENT OF FEES AND SURCHARGES. (a) Before the start of a license year, an applicant shall estimate the gross revenues that the applicant will receive from sales of each pesticide product during the payment period that ends during the year for which a license is sought under s. 94.68 and shall pay the amounts under subs. (2), (3), and (3m) based on that estimate. At least 15 days before beginning to sell a new pesticide product in this state, a licensee shall estimate the gross revenues that the applicant will receive from sales of that pesticide product during the payment period in which the licensee begins to sell the pesticide product and shall pay the amounts under subs. (2), (3), and (3m) based on that estimate.

(b) Before the end of a license year, a licensee shall report to the department the gross revenues that the licensee received from sales of each pesticide product during the payment period that ended during the license year, as required under s. 94.68 (2) (a) 2., and shall reconcile the estimated payment made under par. (a) with the amounts actually due under subs. (2), (3), and (3m) as follows:

1. If the amount due based on actual sales is greater than the amount paid based on estimated sales, the licensee shall pay the additional amount due.
2. If the amount due based on actual sales is less than the amount paid based on estimated sales, the licensee may request the department to reimburse the licensee for the amount of the overpayment.
3. If the amount due based on actual sales equals the amount paid based on estimated sales, no action is required.

(c) 1. Except as provided in subd. 2., if a licensee’s total payment due under par. (b) is more than 20% of the total amount paid under par. (a), the licensee shall pay a penalty equal to 20% of the total amount due under par. (b). The penalty under this subdivision is in addition to any late filing fee under s. 93.21 (5).

2. Subdivision 1. does not apply to a licensee if the licensee’s payments under par. (a) are based on estimates of gross revenues from sales for each pesticide product that equal at least 90% of the licensee’s gross revenues from sales of the pesticide product during the preceding year.

(4) PRIMARY PRODUCERS; WELL COMPENSATION FEE. A primary producer applying for a license under s. 94.68 shall pay a well compensation fee of \$150.

(5) UNREPORTED PESTICIDE; INCREASED LICENSE FEE. If a person applying for or holding a license under s. 94.68 sells or distrib-

utes a pesticide product for use in this state without having filed a report for the product under s. 94.68 (2) (a) 2. or (3), the license fee for that product is twice the amount determined under sub. (2).

(6) DISCONTINUED PESTICIDE; FINAL LICENSE FEE AND CLEANUP SURCHARGE. (a) A person holding a license under s. 94.68 who stops selling or distributing a pesticide product for use in this state shall do all of the following:

1. Notify the department by December 31 of the year in which the person stops selling or distributing the pesticide product for use in this state.

2. By March 31 of the year following the year in which the person stopped selling or distributing the pesticide product for use in this state, file a report with the department showing the gross revenue that the person derived from the sale of the pesticide product for use in this state from October 1 of the year before the year in which the person stopped selling or distributing the pesticide product to December 31 of the year in which the person stopped selling or distributing the pesticide product.

3. By March 31 of the year following the year in which the person stopped selling or distributing the pesticide product for use in this state, pay a final license fee for the pesticide product, calculated under sub. (2) based on the sales of the pesticide product during the period specified in subd. 2.

4. If the product is a nonhousehold pesticide, pay a final agricultural chemical cleanup surcharge calculated under sub. (3) based on sales of the product during the period specified in subd. 2.

5. If the product is a wood preservative to which sub. (3m) applies, pay a final environmental cleanup surcharge calculated under sub. (3m) based on sales of the product during the period specified in subd. 2.

(b) The department may not disclose information obtained under par. (a) 2.

(7) USE OF FEES AND SURCHARGES. (a) *License fees.* The department shall deposit all license fees collected under subs. (2), (5) and (6) (a) 3. in the agrichemical management fund except as follows:

1. The department shall deposit an amount equal to \$94 for each pesticide product for which an applicant pays a license fee in the environmental fund for environmental management.

2. The department shall deposit a hazardous household waste collection and disposal fee of \$30 for each household pesticide product for which an applicant pays a license fee in the environmental fund for environmental management.

(b) *Nonhousehold pesticides; cleanup surcharge.* The department shall deposit the surcharges collected under subs. (3) and (6) (a) 4. in the agricultural chemical cleanup fund.

(bm) *Wood preservatives; cleanups surcharge.* The department shall deposit the surcharges collected under subs. (3m) and (6) (a) 5. in the environmental fund for environmental management.

(c) *Well compensation fee.* The department shall deposit the well compensation fees collected under sub. (4) in the environmental fund for environmental management.

(8) FEES AND SURCHARGES NONREFUNDABLE. The department may not refund a fee or surcharge under this section after the department issues a license under s. 94.68 to the person who paid the fee or surcharge, unless the fee or surcharge was not properly charged or collected.

History: 1989 a. 31; 1997 a. 27; 1999 a. 9; 2003 a. 33.

Cross Reference: See also chs. ATCP 29, 30, and 31 and ss. ATCP 160.19 and 160.21, Wis. adm. code.

94.685 Pesticides; licensing of dealers and distributors of restricted–use pesticides. (1) No dealer or distributor may sell or offer to sell a restricted–use pesticide in this state, whether or not the sale is made wholly or partially in this state or another state, without a license issued by the department under

this section. A license expires on December 31 annually and is not transferable.

(2) (a) A dealer or distributor applying for an annual license under sub. (1) shall apply on a form provided by the department. The application shall include the applicant's full name and the mailing address and street address of each business location from which the applicant sells, or intends to sell, restricted–use pesticides. The applicant shall submit the license fee and surcharge required under sub. (3) with the application.

(b) No dealer or distributor may sell any restricted–use pesticide from a sales location opened during a license year until that dealer or distributor pays the license fee and surcharge required under sub. (3) for the new location.

(3) (a) A dealer or distributor shall pay the following annual license fee and surcharge for each location from which the dealer or distributor sells restricted–use pesticides:

1. A license fee of \$60.

2. An agricultural chemical cleanup surcharge of \$40, unless the department establishes a lower surcharge under s. 94.73 (15), except that the dealer or distributor need not pay the surcharge for the license years that begin on January 1, 1999, and on January 1, 2000.

(b) 1. The department shall deposit the fee under par. (a) 1. in the agrichemical management fund.

2. The department shall deposit the surcharge collected under par. (a) 2. in the agricultural chemical cleanup fund.

History: 1987 a. 27; 1991 a. 269; 1993 a. 16, 490; 1997 a. 27.

Cross Reference: See also chs. ATCP 29, 30, and 31 and ss. ATCP 160.19 and 160.21, Wis. adm. code.

94.69 Pesticides; rules. (1) The department may promulgate rules:

(a) To declare as a pest any form of plant or animal life or virus which is injurious to plants, persons, animals or substances.

(b) To determine which pesticides and substances contained therein are highly toxic to persons.

(c) To determine standards of coloring or discoloring for pesticides.

(d) To carry out the provisions of ss. 94.67 to 94.71, including the sale, distribution or storage of pesticides, the collection and examination of pesticide samples, and the removal of pesticides from sale after registration has been canceled or if otherwise being sold, offered or exposed for sale in violation of the law or rules of the department.

(e) To govern the labeling of pesticides, including the use of precautionary or warning statements, the declaration of ingredients, and the giving of adequate instructions or directions for use.

(f) To establish reasonable standards for the packaging of those pesticides which the department finds require special care in packaging and to the extent found necessary to prevent injury to the public.

(g) To require permits or notice to the department prior to the shipment or use of pesticides for experimental or research purposes, including conditions under which such permits may be granted or notice required.

(h) To govern the conditions under which containers of pesticides may be transported, stored or disposed of.

(i) To govern the use of pesticides, including their formulations, and to determine the times and methods of application and other conditions of use.

(j) The department shall promulgate rules when it determines that it is necessary for the protection of persons or property from serious pesticide hazards and that its enforcement is feasible and will substantially eliminate or reduce such hazards. In making this determination the department shall consider the toxicity, hazard, effectiveness and public need for the pesticides, and the availability of less toxic or less hazardous pesticides or other means of pest

control. These rules do not affect the application of any other statutes or rules promulgated under those statutes.

(k) To register pesticides formulated for distribution and use within this state to meet special local needs as authorized under the federal act and impose fees reasonably calculated to cover the cost of registration.

(L) To exempt any pesticides from the application of ss. 94.67 to 94.71 which are adequately regulated under other state or federal laws or which are of such a character that the regulation of their use is unnecessary for the protection of health and the environment.

(2) (a) Notwithstanding sub. (1) (i) and ss. 160.19 and 160.21, the department may not promulgate a rule prohibiting the use of atrazine in part or all of the area described in par. (b), based on a sample of groundwater taken before June 17, 1998, with a concentration of total chlorinated atrazine residue that attains or exceeds the enforcement standard if the concentration of total chlorinated atrazine residue in a subsequent sample of groundwater from the same sampling point is less than the enforcement standard, except that the department may promulgate a rule prohibiting the use of atrazine in part or all of the area described in par. (b) based on a sample of groundwater taken after June 17, 1998, in which the concentration of total chlorinated atrazine residue attains or exceeds the enforcement standard.

(b) Paragraph (a) applies to an area in the town of North Lancaster, Grant County, described as follows: SE–1/4 of Sec. 7, S–1/2 of Sec. 8, SW–1/4 of Sec. 9, W–1/2 of Sec. 16, Sec. 17, E–1/2 of Sec. 18, NE–1/4 of Sec. 19, N–1/2 of Sec. 20 and NW–1/4 of Sec. 21, T. 5 N., R. 3 W.

History: 1975 c. 94 s. 91 (10); 1977 c. 106; 1983 a. 410; 1997 a. 27, 237.

Cross-reference: See s. 94.709 for prohibition of use of DDT and exceptions to the prohibition.

Cross Reference: See also chs. ATCP 29, 30, and 31 and ss. ATCP 160.19 and 160.21, Wis. adm. code.

When a criminal action is brought for a violation of the ch. 94 prohibition of the deposit of pesticides in public waters of the state, the proceeding is not barred by a civil action to recover the statutory value of the fish killed by the pesticides. 62 Atty. Gen. 130 (1974).

94.695 Pesticide sales and use reporting system.

(1) PROPOSAL. The department shall develop a proposal for a pesticide sales and use reporting system and shall submit the proposal to the joint committee on finance for review.

(2) FUNDING. If the joint committee on finance approves the proposal under sub. (1), it may, from the appropriation under s. 20.865 (4) (u), supplement the appropriation under s. 20.115 (7) (ue) in an amount not to exceed \$150,000. Notwithstanding s. 13.101 (3) (a), the committee is not required to find that an emergency exists.

(3) PILOT PROJECT. If the joint committee on finance approves the proposal under sub. (1), the department shall administer a pilot program to test the pesticide sales and use reporting system.

History: 1999 a. 9.

Cross Reference: See also chs. ATCP 29, 30, and 31 and ss. ATCP 160.19 and 160.21, Wis. adm. code.

94.70 Pesticides; prohibited acts. (1) No person may

distribute, sell, offer for sale, hold for sale, ship, deliver for shipment or receive for distribution, delivery or sale to any person in this state whether or not the acts or transactions take place in intrastate commerce or between points within this state through any point outside this state, any pesticide:

(a) Which has not been registered as required under the federal act or rules of the department.

(b) About which claims are made, or directions for use are given, which differ in substance from representations made in connection with its registration under the federal act or rules of the department.

(c) Which differs in composition from the composition represented in connection with its registration under the federal act or rules of the department.

(d) Unless it is in the registrant's, manufacturer's or packer's unbroken immediate container and labeled as required under the federal act or rules of the department.

(e) Which has not been colored or discolored as required under the federal act or rules of the department.

(f) Which is adulterated or misbranded, or violates any other provision of the federal act or ss. 94.67 to 94.71 or rules of the department.

(2) The prohibitions of sub. (1) shall not apply to:

(a) Any carrier while engaged in transporting a pesticide within this state, if such carrier permits the department on request to copy all records showing the transactions in and movement of the products.

(b) Public officials of this state and the federal government engaged in the performance of their official duties.

(c) Persons using or possessing a pesticide in accordance with the terms and conditions of an experimental use permit issued under the federal act or rules of the department.

(d) Articles consigned for shipment to another state or for export to a foreign country, if prepared or packed according to the specifications or directions of the purchaser.

(e) Any person shipping a substance or mixture of substances only in the conduct of screening tests to determine its usefulness or value as a pesticide or its toxicity or other properties and from which the person does not expect to receive any pest control benefit from its use.

(3) No person may:

(a) Detach, alter, deface or destroy, in whole or in part, any label or labeling required under the federal act or under ss. 94.67 to 94.71 or rules under ss. 94.67 to 94.71, or add any substance to or take any substance from any pesticide in a manner that may defeat the purposes of the laws.

(b) Use for personal advantage or reveal, other than to federal or state agencies, the courts, physicians, pharmacists or other persons requiring the information for the performance of their duties, any information relative to formulas acquired in the administration of ss. 94.67 to 94.71 which may be confidential under the federal act or otherwise constitute a trade secret as defined in s. 134.90 (1) (c).

(c) Advertise pesticides registered for restricted-use as a registrant, manufacturer, wholesaler, dealer, retailer or other distributor without disclosing that the pesticides are classified as restricted-use pesticides.

(d) Use or make available for use any restricted-use pesticide contrary to its labeling or other restrictions or exemptions imposed on its use under the federal act or the laws of this state.

(e) Claim falsely to be a certified applicator in one or more uses of any pesticide.

(f) Use or direct the use of pesticides as a certified applicator in categories of pesticide use and application for which no certification has been obtained.

(g) Use any pesticide in a manner inconsistent with its labeling except as authorized by the department.

(h) Use any pesticide under an experimental use permit contrary to the provisions of the permit.

(i) Fail to maintain records or file reports as required under ss. 94.67 to 94.71 or rules under ss. 94.67 to 94.71 or falsify records or reports or any application filed with the department.

(j) Violate any other provisions of ss. 94.67 to 94.71 or orders or rules issued under ss. 94.67 to 94.71.

History: 1975 c. 94 s. 91 (10); 1977 c. 106; 1985 a. 236; 1987 a. 27.

Cross Reference: See also chs. ATCP 29, 30, and 31 and ss. ATCP 160.19 and 160.21, Wis. adm. code.

A "negligence per se" instruction was appropriate when a violation of sub. (3) (g) damaged a beekeeper's hives. *Bennett v. Larsen Co.* 118 Wis. 2d 681, 348 N.W.2d 540 (1984).

Sub. (1) (b) was, as a matter of law, violated by the defendant when the federal label, which represented the minimum information that could have been submitted to the department, provided that application of the herbicide after 50% emergence

might reduce yields, when a representative of the defendant told the plaintiff that the plaintiff's potatoes would only be singed a little by applying the herbicide after 50% emergence. *Perzinski v. Chevron Chemical Co.* 503 F.2d 654.

94.701 Pesticides; local regulation. (1) This section is an enactment of statewide concern for the purpose of providing uniform regulation of pesticides.

(2) In this section, “political subdivision” means a city, village, town or county.

(3) (a) Except as provided in par. (b) or (c), a political subdivision may not prohibit the use of or otherwise regulate pesticides.

(b) A political subdivision may enact an ordinance that does any of the following:

1. Regulates pesticide use on property in which the political subdivision has a fee simple ownership interest.

2. Zones areas with respect to pesticide manufacturing, distribution and disposal.

3. Implements any regulation of pesticides that the political subdivision is required by federal law or other state laws to implement.

4. Implements a cooperative agreement with the federal environmental protection agency under 7 USC 136u (a).

5. Prohibits conduct that is the same as conduct prohibited under ss. 94.69 to 94.71 or 7 USC 136 to 136y.

6. Requires that, when notification of pesticide use is required by state or federal law, notification of that use be given to the political subdivision.

7. Sets standards for fire prevention in the storage of a pesticide that poses a fire hazard.

8. Regulates pesticides pursuant to a storm water management program that is consistent with 40 CFR 122.26.

(c) A political subdivision may enact an ordinance or enter into an agreement under s. 289.33 (9) relating to the storage, treatment or disposal of solid waste containing pesticides, pesticide containers or pesticide residues.

(4) (a) 1. No later than March 1, 1994, a political subdivision shall provide the department with a copy of any ordinance that is authorized under sub. (3) and that is enacted before December 29, 1993.

2. A political subdivision may not enact an ordinance that is authorized under sub. (3) until it consults with the department. If a political subdivision enacts an ordinance that is authorized under sub. (3), it shall provide the department with a copy of the ordinance no later than 60 days after enactment.

(b) Before March 1 of each year, a political subdivision with an ordinance that is authorized under sub. (3) (b) 5. shall notify the department of all enforcement actions taken under that ordinance during the preceding year.

History: 1993 a. 116; 1995 a. 227.

Cross Reference: See also chs. ATCP 29, 30, and 31 and ss. ATCP 160.19 and 160.21, Wis. adm. code.

A local government is not preempted by sub. (3) (a) from regulating the phosphorus content in weed and feed products. A weed and feed product is both a pesticide, which under sub. (3) (a), only the state can regulate, and a fertilizer, which local government can regulate. The definition of both “pesticide” and “fertilizer” as including a mixture of the two preserves both state regulation of pesticides and local regulation of fertilizers. The state regulates the pesticide components of the mixed products, local government the fertilizer components. *Croplife America, Inc. v. City of Madison*, 432 F.3d 732 (2005).

94.702 Veterinary clinic permit. (1) In this section, “clinic” means a veterinary clinic where pesticides are repackaged, used or directed to be used by a veterinarian or by a person under the direction or supervision of a veterinarian. Multiple business locations under common ownership and control constitute a single clinic.

(2) No person may own a clinic without a permit issued by the department under this section.

(3) Permits issued under this section shall expire on December 31 of each odd-numbered year. An application for a permit shall be submitted to the department on a form provided by the depart-

ment and shall include a \$25 permit fee. The application shall include all of the following information:

(a) The name and complete mailing address and street address of the clinic.

(b) The name of every person associated with or employed by the clinic who prescribes, handles or uses pesticides, including the license number of any such person licensed under s. 94.704.

(3m) The department shall deposit the fees collected under sub. (3) in the agrichemical management fund.

(4) The department may suspend or revoke any permit issued under this section for a violation of ss. 94.67 to 94.71. All such violations shall also be referred to the veterinary examining board for action under s. 453.07.

History: 1989 a. 279; 1997 a. 27.

Cross Reference: See also chs. ATCP 29, 30, and 31 and ss. ATCP 160.19 and 160.21, Wis. adm. code.

94.703 Pesticides; licensing of commercial application businesses. (1) No commercial application business may operate in this state without a license issued by the department under this section. A natural person who operates a commercial application business as sole proprietor, and who is also an individual commercial applicator, shall be licensed under this section and s. 94.704. A license issued under this section expires on December 31 annually and is not transferable.

(2) An application for a license under this section shall be submitted on a form provided by the department and shall be accompanied by the license fee required under sub. (3). The license application shall include all of the following information, which shall be promptly updated by the licensee in the event of any change during the license period:

(a) The complete name, mailing address and street address of the licensee, and the business name, if any, under which the licensee operates as a commercial application business. The application shall specify whether the applicant is a natural person, corporation or other legal entity.

(b) The street address of every business location from which the licensee operates as a commercial applicator for hire in this state or, if the business location has no street address, its legal description.

(c) If the licensee employs any person to use pesticides, or to direct the use of restricted-use pesticides, the complete name and license number under s. 94.704 of each person so employed.

(d) Any other information reasonably required by the department for the administration of this section.

(3) (a) A person applying for an annual license under this section shall pay the following annual license fee and surcharge for each business location that the person operates in this state, including each business location added during the license year:

1. A license fee of \$70.

2. An agricultural chemical cleanup surcharge of \$55, unless the department establishes a lower surcharge under s. 94.73 (15), except that the person need not pay the surcharge for the license years that begin on January 1, 1999, and on January 1, 2000.

(b) For purposes of this subsection, a business location includes a site at which a licensee mixes or loads at least 1,500 pounds of active ingredient during a license year, excluding active ingredient that is applied at or immediately adjacent to the mixing or loading site. If a licensee mixes or loads a total of at least 1,500 pounds of active ingredient at 2 or more sites that are within 0.5 mile of each other, those sites shall be considered a single business location.

(c) 1. The department shall deposit the fees collected under par. (a) 1. in the agrichemical management fund.

2. The department shall deposit surcharges collected under par. (a) 2. in the agricultural chemical cleanup fund.

(4) No commercial application business may apply any pesticide, or direct the application of any pesticide by its employee,

unless the pesticide application is made by an individual commercial applicator licensed under s. 94.704 and certified under s. 94.705 in the applicable pesticide use category.

(5) No licensee under this section may employ any natural person as an individual commercial applicator unless the employee is licensed under s. 94.704.

History: 1987 a. 27; 1993 a. 16; 1997 a. 27.

Cross Reference: See also chs. ATCP 29, 30, and 31 and ss. ATCP 160.19 and 160.21, Wis. adm. code.

94.704 Pesticides; licensing of individual commercial applicators. (1) No person may act as an individual commercial applicator without a license issued by the department under this section. A license expires on December 31 annually and is not transferable. A licensee shall carry the license on his or her person at all times when acting as an individual commercial applicator. No license is required of a private applicator who applies pesticides solely as a private applicator or only on an occasional or incidental basis as a commercial applicator.

(2) An application for a license under this section shall be submitted on a form provided by the department and shall be accompanied by the license fee and surcharge required under sub. (3). A license application shall include all of the following information, which shall be promptly updated by the licensee in the event of any change during the license period:

(a) The complete name, mailing address and street address of the licensee.

(b) If the licensee is engaged in business as a sole proprietor, the licensee's business name and address if different than the licensee's personal name and address.

(c) If the licensee is employed by a commercial application business, the name and address of the employing commercial application business.

(d) Any other information reasonably required by the department for the administration of this section.

(3) (a) Except as provided in par. (b), a person applying for an annual license under this section shall pay the following license fee and surcharge:

1. A license fee of \$40, except that the license fee is \$30 for the license years that begin on January 1, 1999, January 1, 2000, January 1, 2001, and January 1, 2002.

2. An agricultural chemical cleanup surcharge of \$20, unless the department establishes a lower surcharge under s. 94.73 (15), except that the person need not pay the surcharge for the license years that begin on January 1, 1999, and on January 1, 2000.

(b) No license fee is required under par. (a) for a government employee or an employee of a public or private educational institution if the employee's activities as an individual commercial applicator fall within the scope of his or her employment by the governmental unit or educational institution.

(c) 1. The department shall deposit license fees collected under par. (a) 1. in the agrichemical management fund.

2. The department shall deposit the surcharges collected under par. (a) 2. in the agricultural chemical cleanup fund.

(4) No licensee under this section may use or direct the use of any pesticide unless the licensee is certified under s. 94.705 in the applicable use category.

History: 1987 a. 27; 1993 a. 16; 1995 a. 27; 1997 a. 27; 1999 a. 9.

Cross Reference: See also chs. ATCP 29, 30, and 31 and ss. ATCP 160.19 and 160.21, Wis. adm. code.

94.705 Pesticides; certification requirements and standards. (1) **CERTIFICATION REQUIREMENTS.** (a) 1. No person may use or direct the use of a restricted-use pesticide as a private applicator unless the person is certified as a private applicator in the applicable pesticide use category under this section.

2. No person may use or direct the use of any pesticide as a commercial applicator unless the person is all of the following:

a. Certified as a commercial applicator in the applicable pesticide use category under this section.

b. Licensed as an individual commercial applicator under s. 94.704. This subd. 2. b. does not apply to a private applicator who uses or directs the use of a pesticide as a commercial applicator on an occasional or incidental basis only.

(b) Applications for certification shall be submitted on forms prescribed by the department and shall specify the category of pesticide use and application for which application for certification is made. Certifications shall be valid for a period of 5 years from date of issuance or renewal, unless terminated or suspended by the department for failure to comply with the terms and conditions of its issuance or for violation of ss. 94.67 to 94.71 or rules or orders issued under ss. 94.67 to 94.71. Certifications may be changed or amended during the 5-year period for which issued by the addition of other categories of pesticide use and application for which the applicator was not certified at the beginning of the certification period, but all the changes or amendments shall expire concurrently with the end of the 5-year certification period.

(c) A certified private applicator may be granted an additional 5 years of certification upon the expiration of his or her certification, under one of the certification options under sub. (5). A certified commercial applicator may be granted an additional 5 years of certification upon the expiration of his or her certification, subject to a written examination approved by the department.

(d) Except as provided under sub. (4), no commercial applicator may be certified except upon satisfactory completion of a written examination. The examination shall be designed to test the applicant's competency in each category of pesticide use for which the applicant seeks certification.

(2) **CERTIFICATION STANDARDS.** The department shall, by rule, adopt standards for the training and certification of private and commercial applicators, at least equal to but not to exceed federal standards adopted under the federal act. In the adoption of the standards, separate categories of pesticide use and application may be established for certification purposes depending on the specific types of pesticides used, the purposes for which they are used, types of equipment required in their application, the degree of knowledge and skill required and other factors which may warrant the creation of different categories. The standards shall provide that individuals to be certified must be competent with respect to the use and application of pesticides in the various categories of pesticide use and application for which certification is desired. For commercial applicators, competence in the use and handling of pesticides shall be determined on the basis of written examinations.

(3) **RECORDS; REPORTS.** Certified commercial applicators, including nonresident commercial applicators, shall maintain records of amounts, dates, types, places and uses of all pesticides as prescribed by the department. Records shall be kept for 2 years and shall be open to and available for inspection at all reasonable times by the department or cooperating governmental enforcement agencies.

(4) **CERTIFICATION OF NONRESIDENTS.** (a) The department may, without examination or training in this state, certify a nonresident to use or direct the use of pesticides in a specific pesticide use category if the nonresident meets all of the following requirements:

1. The person is certified to use pesticides, in the same or similar pesticide use category, under laws or programs in the person's state of residence which have requirements for certification equivalent to this section and ss. 94.703 and 94.704 and the rules under this section and ss. 94.703 and 94.704. In order to be certified without examination as a commercial applicator in this state, the person must be certified as a commercial applicator in the person's state of residence.

2. The person's license or certification in the state of residence has not been denied, suspended or revoked under the federal act or by the state of residence.

(b) An application for nonresident certification under par. (a) shall be made on a form provided by the department. The depart-

ment may require an applicant to submit any information that is reasonably necessary for the administration of this subsection. An application under this subsection shall be accompanied by a non-refundable fee of \$75, except that no fee is required for the certification of a nonresident as a private applicator. The department shall deposit the fees collected under this paragraph in the agricultural management fund.

(c) A certification issued under this subsection expires on December 31 of the year of issuance and is not transferable. If the holder of a nonresident certification becomes a resident of this state, the nonresident certification may not be renewed after its expiration date.

(5) PRIVATE APPLICATORS. The department shall certify resident private applicators to use restricted-use pesticides in any of the following ways, as it deems appropriate:

(a) *Certification by training session.* A private applicator may attend a pesticide applicator training session approved by the department. The training shall cover all areas of competency necessary to comply with standards under the federal act. No person seeking certification under this paragraph may be required to take a written examination in order to obtain certification. Upon successful completion of the training session the applicator shall be granted certification for 5 years.

(b) *Certification by examination.* A private applicator may take a written examination approved by the department including all areas of competency necessary to comply with the federal act. Certification for 5 years shall be granted to the applicator upon successful completion of the examination. A private applicator may engage in a self-study program using training materials available in training sessions under par. (a). Written examinations shall be given at a designated department office, county extension office or at a site approved by the department.

(c) *Certification for emergency use.* A person may apply for an emergency use certification. Only one emergency use certification shall be granted to a person. Thereafter, certification under par. (a) or (b) is necessary. The department shall conduct a specific evaluation of the applicant's ability to use and apply the pesticide safely and correctly and make any other evaluations deemed necessary by the department. The department shall notify the dealer by telephone that the applicant has been granted an emergency use certification. Written notice of the applicant's responsibility and liability shall be sent by the department to the dealer and the applicant. This certification shall be valid for a onetime specific use only. The department's evaluation shall be conducted at a designated department office, any University of Wisconsin-Extension office, or any other site approved by the department.

(d) *Certification for persons of limited English language ability.* Persons of limited English language ability shall receive the training necessary to permit them to use and apply restricted-use pesticides. The department shall conduct an oral evaluation of each person to determine competency. Certification under this paragraph shall be required for use of each restricted-use pesticide. Each certificate shall state the specific restricted-use pesticide the person is certified to use or apply.

History: 1977 c. 106; 1987 a. 27 ss. 1693cz to 1693ds, 1693dz; 1993 a. 16, 27; 1995 a. 27; 1997 a. 27; 2001 a. 103.

Cross Reference: See also chs. ATCP 29, 30, and 31 and ss. ATCP 160.19 and 160.21, Wis. adm. code.

94.707 Distribution and sale of certain pesticides.

(1) PROHIBITION. No person may distribute, sell, offer for sale or use any pesticide product containing any of the following active ingredients:

- (a) 2,4,5-trichlorophenoxyacetic acid (2,4,5-T).
- (b) 2-(2,4,5-trichlorophenoxy) propionic acid (silvex).
- (c) Aldrin.
- (d) Chlordane.
- (e) Dieldrin.
- (f) Heptachlor.

(1m) USE OF DAMINOZIDE ON FOOD-PRODUCING PLANTS PROHIBITED. No person may distribute, sell, offer for sale or use any pesticide product containing daminozide as an active ingredient and intended for use on a food-producing plant.

(2) EXEMPTION. The prohibition under sub. (1) does not apply to a person using or possessing a pesticide product containing any active ingredient under sub. (1) (a) to (f) according to the terms and conditions of an experimental use permit issued under the federal act or rules of the department.

(3) EXISTING STOCKS. (a) No later than 6 months after the applicable date under par. (d), any person, except a dealer or distributor, who owned any quantity of a pesticide listed in sub. (1m) or containing an active ingredient listed in sub. (1) (c) to (f) on the applicable date under par. (d) shall return or deliver all of that pesticide to the manufacturer or to the dealer or distributor from whom he or she purchased the pesticide.

(b) No later than one year after the applicable date under par. (d), any dealer or distributor who owned any amount of a pesticide listed in sub. (1m) or containing an active ingredient listed in sub. (1) (c) to (f) on the applicable date under par. (d) or who received any such pesticide under par. (a) shall return or deliver all of that pesticide to the manufacturer.

(c) Within 30 days after receiving any pesticide under par. (a) or (b), a dealer, distributor or manufacturer shall pay the person from whom the pesticide was received the amount of money which that dealer, distributor or manufacturer charged that person for the quantity of pesticide received. No payment under this paragraph may exceed the fair market value of the pesticide immediately before the applicable date under par. (d).

(d) The applicable dates for sub. (3) are the following:

1. For pesticide products containing the ingredients under sub. (1) (c) to (f), May 3, 1988.

2. For pesticide products containing the ingredient under sub. (1m), February 15, 1990.

History: 1983 a. 397; 1987 a. 357; 1989 a. 52.

Cross Reference: See also chs. ATCP 29, 30, and 31 and ss. ATCP 160.19 and 160.21, Wis. adm. code.

94.708 Pesticides; sale and use to control bats.

(1) DEFINITION. As used in this section, "bat control purposes" means for the purpose of killing, injuring, repelling or otherwise affecting the behavior of bats.

(2) SALE PROHIBITED. Except as provided under sub. (4), no person may sell, hold for sale or distribute any pesticide except naphthalene for bat control purposes to a person in this state. No dealer may advertise in this state or recommend any pesticide for bat control purposes to a person in this state.

(3) USE PROHIBITED. Except as provided under sub. (4), no person may use any pesticide except naphthalene for bat control purposes.

(4) EXCEPTION. The department shall promulgate rules establishing standards for the sale, advertisement and use of pesticides for emergency bat control. The department may issue a permit authorizing the use of a pesticide in accordance with the rules that it promulgates only in the case of an individual bat colony after a determination that there exists an outbreak of rabies that threatens public health or another situation where the existence of a colony of bats threatens the health or welfare of any person. The department may not base its determination on an isolated individual instance of a rabid bat.

History: 1983 a. 353; 1997 a. 27.

Cross Reference: See also chs. ATCP 29, 30, and 31 and ss. ATCP 160.19 and 160.21, Wis. adm. code.

94.709 Distribution and sale of DDT prohibited. (1) No person shall distribute, sell, offer for sale or use the chemical compound DDT (dichlorodiphenyltrichloroethane) or any of its isomers except as provided in this section. In sub. (2) "DDT" includes compounds isomeric with DDT.

(2) (a) In the event of the outbreak of an epidemic disease of humans or animals spread by insects which it is known can be controlled by DDT but cannot be adequately controlled by any other known pesticide, the department may authorize the use of DDT in controlling the epidemic upon a finding that:

1. A serious epidemic disease of humans or animals exists;
2. The disease is likely to spread rapidly unless insects which spread the disease are controlled; and
3. The only effective means of control is DDT.

(b) In the event of the outbreak of a plant disease of epidemic proportions which threatens a significant portion of the affected crop and which is caused or spread by an insect which it is known can be controlled by DDT but cannot be adequately controlled by any other known pesticide, the department may authorize the use of DDT in controlling the epidemic upon a finding that:

1. An epidemic plant disease exists;
2. The disease threatens a significant portion of the affected crop; and
3. The only effective means of control is DDT.

(c) The department also may authorize the use of DDT or its isomers or metabolites for specified research by educational institutions if it finds that no ecologically significant residues of DDT or its isomers or metabolites will be allowed to escape into the environment.

History: 1971 c. 40 s. 93; 1977 c. 203; 1997 a. 27; 1997 a. 111 ss. 18 to 24; Stats. 1997 s. 94.709.

Cross Reference: See also chs. ATCP 29, 30, and 31 and ss. ATCP 160.19 and 160.21, Wis. adm. code.

94.71 Pesticides; penalties; enforcement. (1) PENALTIES. (a) 1. Any person who violates ss. 94.67 to 94.71 or any rules or orders issued under ss. 94.67 to 94.71 shall forfeit not less than \$100 nor more than \$500 for the first violation and not less than \$200 nor more than \$1,000 for any subsequent violation within 5 years.

2. Any commercial applicator, dealer or distributor who knowingly violates any provision of ss. 94.67 to 94.71 or any rules or orders issued under ss. 94.67 to 94.71 may be fined not more than \$5,000 or imprisoned not more than one year in the county jail or both. Other persons, including private applicators who knowingly violate ss. 94.67 to 94.71 or any rules or orders issued under ss. 94.67 to 94.71 may be fined not more than \$1,000 or imprisoned not more than 30 days or both.

(b) Certified applicators shall be responsible for the acts of persons who are their employees or acting under their supervision and engaged in the use or application of pesticides.

(2) **SEIZURES.** If the department has reasonable cause to believe that any pesticide is in violation of ss. 94.67 to 94.71, it may deliver to the owner or custodian of the pesticide an order prohibiting the sale or movement of the pesticide until an analysis or examination has been completed. Such holding order shall not be effective for more than 60 days from the time of delivery thereof. The pesticide described in any holding order shall not be sold or moved for any purpose without the approval of the department. If the department, after analysis or examination, determines that the pesticide described in the order is not in violation of ss. 94.67 to 94.71, it shall promptly notify the owner or custodian of the pesticide and the notice shall terminate the holding order. If the analysis or examination shows that the pesticide is in violation of ss. 94.67 to 94.71, the owner or custodian of the pesticide shall be so notified. Upon receipt of notice the owner or custodian shall dispose of the pesticide only in a manner authorized by the department. The owner or custodian may within 10 days of receipt of notice petition for a hearing as provided in s. 93.18.

(3) **ENFORCEMENT.** (a) Examination of pesticides shall be made under the direction of the department for the purpose of determining whether they comply with the requirements of ss. 94.67 to 94.71. The department or any person may refer the facts to the district attorney for the county in which the violation

occurred. In addition to or in lieu of any other remedies provided herein, the department may apply to a circuit court for a temporary or permanent injunction to prevent, restrain or enjoin violations of ss. 94.67 to 94.71 and any rules or special or summary orders issued thereunder.

(b) Every registrant or other person whose name and address appears on the label of any pesticide as the manufacturer, packer, distributor or dealer, shall, to the extent that the registrant or other person is able to furnish to the department, on request, when found by the department to be necessary to prevent or control an imminent hazard to the public, a listing of all sales locations or warehouse locations maintained by the registrant or other person in this state for the sale or distribution of products registered by the registrant or other person or bearing the registrant's or other person's name and address as such manufacturer, packer, distributor or dealer; the name and address of all distributors or dealers selling or distributing such products in this state; and the name and address of all outside sales representatives employed by the registrant or other person in this state for the sale or distribution of such products.

(c) In addition to other enforcement procedures, the department may issue a special order under s. 93.18 prohibiting the use, application, storage, distribution or sale of pesticides in violation of ss. 94.67 to 94.71 or rules issued under ss. 94.67 to 94.71. A special order may be issued under this paragraph to prevent or control pesticide contamination of groundwater under ss. 160.23 and 160.25. Special orders may be issued on a summary basis, without prior complaint, notice or hearing, where necessary to protect public health or the environment. A summary special order is subject to a subsequent right of hearing before the department, if requested within 10 days after the date on which the order is served. Any party affected by the order may request a preliminary or informal hearing pending the scheduling and conduct of a full hearing. Hearings, if requested, shall be conducted as expeditiously as possible after receipt of a request for a hearing. Enforcement of the order shall not be stayed pending action on the hearing.

History: 1977 c. 106; 1983 a. 410; 1993 a. 492.

Cross Reference: See also chs. ATCP 29, 30, and 31 and ss. ATCP 160.19 and 160.21, Wis. adm. code.

The legislature may constitutionally prescribe a criminal penalty for the violation of an administrative rule. *State v. Courtney*, 74 Wis. 2d 705, 247 N.W.2d 714 (1976).

94.715 Pest management for schools. (1) DEFINITIONS. In this section:

(e) "Pesticide" has the meaning given in s. 94.67 (25), except that "pesticide" does not include a germicide, sanitizer, or disinfectant.

(2) **REQUIREMENTS FOR SCHOOL BOARDS.** A school board shall do all of the following:

(dm) Authorize pesticide application in a school or on school grounds to be conducted only by persons who are certified in the applicable pesticide use categories under s. 94.705.

(g) Post notice of each pesticide application in a school or on school grounds at the time of the application and for at least 72 hours following the application.

History: 2001 a. 16.

94.72 Commercial feed. (1) DEFINITIONS. (a) "Brand name" means any word, name, symbol or device, or any combination thereof identifying the commercial feed of a manufacturer or distributor and distinguishing it from that of others.

(b) "Commercial feed" means all products or materials used or distributed for use as a feed or an ingredient in the mixing or manufacturing of feed for animals or birds, except the following:

1. Unmixed whole seeds or grains; as defined by United States grain standards.

2. The unmixed meals made directly from and consisting of the entire grains of corn, wheat, rye, barley, oats, buckwheat, flax-

seed, kafir, milo and other seeds or grains. Such unmixed meals shall not be sold in violation of sub. (3).

3. Whole hays, straws, cottonseed hulls, stover and silage, when unmixed with other materials.

4. Meat and other portions of animal carcasses in their raw or natural state without further processing except freezing or denaturing.

(c) “Custom–mixed feed” means commercial feed consisting of a mixture of commercial feeds or feed ingredients mixed on a custom basis at the request of the final purchaser at retail, and containing only commercial feed or feed ingredients in quantities and proportions as specifically directed by the purchaser in requesting the custom–mixing of the feed.

(d) “Department” means department of agriculture, trade and consumer protection.

(e) “Distribute” means to sell, offer to sell, exchange, barter or solicit orders for the sale of a feed product or otherwise to supply or furnish a feed product to purchasers in this state, whether or not the sales or transactions are made wholly or partially in this state or another state.

(f) “Distributor” means any person who distributes a feed product for sale or distribution in this state.

(g) “Feed ingredient” means each of the constituent materials making up or used in the manufacturing of a commercial feed.

(h) “Feed product” means any commercial feed or other product or material used or distributed for use as a feed or an ingredient in the mixing or manufacturing of feed for animals or birds.

(i) “Manufacture” means to mix, blend, process, package or label commercial feed.

(j) “Product name” means the name of the commercial feed which identifies it as to kind, class or specific use.

(2) LABELING. (a) All manufacturers and distributors shall before distributing any commercial feed, except as otherwise provided under par. (b), have printed on, or attached to each bag, package, carton or delivered with each bulk lot thereof a plainly printed label in the English language clearly and truly stating:

1. The net weight of the contents of the package, bag, carton or bulk lot;

2. The product name and the brand name, if any, of the commercial feed;

3. The name and principal address of the manufacturer or person responsible for placing the commodity on the market;

4. The minimum percentage of crude protein;

5. The minimum percentage of crude fat;

6. The maximum percentage of crude fiber;

7. The name of each ingredient used in its manufacture except as may be exempt by department rule. The official names of all materials which have been so defined by the association of American feed control officials shall be used in the declaration of the names of ingredients, but no ingredient statement shall be required for single ingredient feeds officially defined by the association of American feed control officials. The department may by rule permit the use of a collective term for a group of ingredients which perform a similar function;

8. In the case of mixed feeds containing more than a total of 5% of one or more mineral ingredients, or other unmixed materials used as mineral supplements, and in the case of mineral feeds, mixed or unmixed, that are manufactured, represented and sold for the primary purposes of supplying mineral elements in rations for animals or birds, and that contain mineral elements generally regarded as dietary factors essential for normal nutrition, the minimum percentage of calcium (Ca), phosphorus (P) and iodine (I) and the maximum percentage of salt (NaCl), if those elements are present. If no nutritional properties other than those of a mineral nature are claimed for a mineral feed product, the percentages of crude protein, crude fat and crude fiber may be omitted;

9. In the case of feeds containing for their principal claim dietary factors in forms not expressible by the foregoing chemical

components or are thereby inadequately described, a statement of guarantee as shall be specified by rules of the department;

10. Adequate directions for the safe and effective use of commercial feed containing drugs or antibiotics, or of any other feed as required under department rules;

11. Such precautionary or warning statements as the department may by rule require for the safe and effective use of specific kinds of commercial feed.

(b) Custom–mixed feed shall be accompanied by a label, invoice, delivery slip or other shipping document, bearing the following information:

1. Name and address of the manufacturer.

2. Name and address of the purchaser.

3. Date of delivery.

4. The name and net weight of each feed ingredient used in the mixture, including the product name and brand name, if any, of commercial feeds used as a feed ingredient in the custom–mixed feed.

5. Adequate directions for the safe and effective use of custom–mixed feed containing drugs or antibiotics, or of such other custom–mixed feed the department by rule requires.

6. Such precautionary or warning statements as the department may by rule require for the safe and effective use of custom–mixed feed.

(3) WEED SEEDS. No commercial feed or unmixed meal shall be sold, distributed or offered or exposed for sale which contains germinative noxious weed seeds or other germinative weed seed excepting wild buckwheat seeds, in excess of such quantities as are unavoidably present with the most improved commercial practice of manufacture of such commercial feed or unmixed meal, provided that such germinative noxious weed seeds shall not be greater than one one–hundredths of one percent, or other germinative weed seeds excepting wild buckwheat seed shall not be greater than one–fourth of one percent, unless such presence is clearly and permanently indicated on the label. The term “noxious weed seeds” as used in this section shall mean the seeds of Canadian thistle, wild mustard and quack grass, either single or combined.

(4) MATERIALS PROHIBITED. No compounded commercial feed shall be sold, distributed or offered or exposed for sale which contains humus, peat, sphagnum moss, sawdust or other material of an organic nature having little or no feeding value.

(5) COMMERCIAL FEED LICENSE. (a) No person may manufacture or distribute commercial feed in this state without a commercial feed license from the department, but no license shall be required of persons distributing only:

1. Packaged commercial feed in the original packages or containers of a licensed manufacturer or distributor as packaged and labeled by the manufacturer or distributor and whose name and address appear on the label as required under sub. (2) (a);

2. Bulk commercial feed in the form received from a licensee and labeled as required under sub. (2) with label information furnished by such licensee, except for net weight statement; or

3. Feeds custom–mixed by a person at retail, if commercial feeds used in the mixture are obtained from a licensee under this section and the person has evidence in the form of invoices or sales receipts indicating that the inspection fees on the commercial feed ingredients have been or will be paid by the licensee.

(b) Applications for a license shall be made on forms prescribed by the department listing each business location used in the manufacture or distribution of commercial feed in this state and such other information the department requires. Applications shall be accompanied by a license fee of \$25 for each separate place of business used in the manufacture of commercial feed, other than custom–mixed feed, in this state and an inspection fee as required under sub. (6). Applications of manufacturers or distributors having no established place of business in this state, but otherwise subject to a license under this section, shall be accompa-

nied by a license fee of \$25 in addition to the required inspection fees. All licenses shall expire on the last day of February of each year. Licenses are not transferable and no credit or refund may be granted for licenses held for less than a full license year. No new business locations may be put into operation during the license year without the payment of an additional fee of \$25 for each new location.

(6) **INSPECTION FEES.** (a) *Fee amounts.* Except as otherwise provided in this subsection, a person required to be licensed under sub. (5) shall pay the following annual inspection fees on all commercial feeds distributed in this state:

1. For commercial feeds distributed in this state, beginning on October 29, 1999, and ending on December 31, 2001, a feed inspection fee of 13 cents per ton.

2. For commercial feeds distributed in this state on or after January 1, 2002, a feed inspection fee of 23 cents per ton.

3. Beginning on October 29, 1999, for commercial feeds distributed in this state a weights and measures inspection fee of 2 cents per ton.

(am) *Tonnage reports and fee payments.* 1. By the last day of February annually, a person who is required to be licensed under sub. (5) shall file a tonnage report with the department showing the number of net tons of commercial feed that the person sold or distributed in this state during the preceding calendar year. By the last day of February annually, the person shall also pay the fees under par. (a) for commercial feed that the person sold or distributed in this state during the preceding calendar year, based on the tonnage report.

2. At the request of the department, a person filing a tonnage report under subd. 1. shall make the records upon which the tonnage report is based available to the department for inspection, copying and audit.

3. The department may not disclose information obtained from a tonnage report under subd. 1.

(b) *Responsibility.* Except as provided in par. (d), if more than one manufacturer or distributor is involved in the chain of distribution, the one who first sells or distributes commercial feed for further sale is responsible for the payment of inspection fees for the feed. No inspection fees are required for commercial feeds sold under the name and label of another licensee if the inspection fees have been or will be paid by a previous manufacturer or distributor in the chain of distribution as evidenced by an invoice or sales receipt. No inspection fees are required for commercial feeds on which the inspection fees have been or will be paid by a previous manufacturer or distributor in the chain of distribution as evidenced by an invoice or sales receipt.

(c) *Invoice or receipt.* A manufacturer or distributor who distributes commercial feed to another manufacturer or distributor except an exempt buyer shall indicate on the invoice or sales receipt that the inspection fees have been or will be paid either by the manufacturer or distributor who distributes the commercial feed or by a prior manufacturer or distributor in the chain of distribution.

(d) *Exemption.* A manufacturer or distributor who is exempted from the license requirement under sub. (5) (a) and who maintains records required under par. (j) is not required to file tonnage reports or to pay inspection fees.

(e) *Credit for feed ingredient.* A manufacturer located in this state may claim an inspection fee credit for commercial feed purchased and used as a feed ingredient in manufacturing another commercial feed if the commercial feed used as a feed ingredient is purchased from a licensee who has or will pay inspection fees on that feed as evidenced by an invoice or sales receipt. The manufacturer shall identify clearly on the tonnage report the amount of commercial feed used as a feed ingredient and the names of licensees from whom it was purchased.

(f) *Exempt buyers.* A licensed manufacturer or distributor in this state who distributes 40% or more of the tonnage amount of commercial feed it manufactures or distributes in other states may

request the department to be classified as an exempt buyer. An exempt buyer is responsible for the payment of inspection fees of all commercial feed it distributes. The department shall maintain a list of all exempt buyers and make the list available on request.

(g) *Credit for feed sold to exempt buyers.* A licensed manufacturer or distributor may claim an inspection fee credit for commercial feed distributed to an exempt buyer. The manufacturer or distributor shall identify clearly on the tonnage report the name of the exempt buyer and the type and amount of commercial feed on which an inspection fee credit is claimed.

(h) *Credit for sales in other states.* A manufacturer or distributor classified as an exempt buyer may claim an inspection fee credit for commercial feed distributed to purchasers in other states. The exempt buyer shall identify clearly on the tonnage report the type and amount of commercial feed on which an inspection fee credit is claimed. The exempt buyer shall maintain a record of all sales to purchasers in other states for which an inspection credit is claimed. This record shall be maintained for 3 years and be made available for inspection, copying or audit on request of the department.

(i) *Failure to file report or pay fees.* The license of any manufacturer or distributor who has failed to file reports or pay fees when due shall be subject to immediate suspension or revocation. Unpaid fees shall constitute a debt until paid. No license may be granted or renewed until the required reports are filed and the fees are paid. A penalty of 10% of the amount due, with a minimum penalty of \$10, shall be assessed against the licensee for all amounts not paid when due. The department may bring an action for the recovery of all fees not paid when due, including reasonable costs of collection.

(j) *Records.* Each licensee shall maintain a record of all quantities and brands of commercial feed purchased for resale, purchased for further use, sold or distributed by the licensee in this state. A manufacturer or distributor who is exempted from the license requirement under sub. (5) (a) shall maintain, as a condition of the exemption, a record of all commercial feed purchased for resale or further use in the manufacture of custom-mixed feeds. This record shall include evidence in the form of invoices or sales receipts indicating that inspection fees have been or will be paid on the feed by a previous manufacturer or distributor. All records shall be maintained for a period of 3 years and be made available for inspection, copying or audit on request of the department.

(8) **ADULTERATION AND MISBRANDING.** (a) No person may sell or distribute any feed product which is adulterated or misbranded.

(b) A feed product is adulterated if:

1. It bears or contains any poisonous or deleterious substance which may render it injurious to the health of animals or which is unsafe within the meaning of section 406, 408 or 409 of the federal food, drug and cosmetic act, 21 USC 346, 346a and 348.

2. It is, or bears or contains any color additive which is unsafe within the meaning of section 706 of the federal food, drug and cosmetic act, 21 USC 376.

3. A valuable component is omitted or abstracted from it in whole or part or a less valuable substance is substituted for a valuable component.

4. Its composition or quality falls below or differs from that which it is purported or represented to possess by its labeling.

5. It contains materials prohibited under sub. (4).

(c) A feed product is misbranded if:

1. Its labeling is false or misleading in any particular.

2. It is sold or distributed under the name of another feed.

3. It is a commercial feed and is not labeled as required under subs. (2) and (3).

(9) **INSPECTION.** The department shall have free access during regular business hours to all places of business, mills, buildings, carriages, cars, vessels and parcels used in this state in the manufacture, transportation, importation, sale or storage of any

feed product. The department may open any parcel containing or supposed to contain any feed product and take from the parcel in the manner prescribed in sub. (10) samples for analysis. The department may cause to be analyzed annually at least one sample so taken of every feed product found, exposed for sale or distributed in this state. Any feed product stored on the premises of a retail establishment shall be considered as being exposed for sale unless plainly labeled or placarded as not being offered for retail sale.

(10) SAMPLING, ANALYSIS. No action may be maintained for a violation of this section based upon an analysis of a sample from less than 10 separate original packages, unless there are less than 10 separate original packages in the lot, in which case portions for the official sample shall be taken from each original package. If the feed product is in bulk, portions shall be taken from not less than 10 different places in the lot but this does not exclude sampling in bulk when not exposed sufficiently to take portions from 10 different places, in which case portions are to be taken from as many places as practicable. If the sample procured is larger than is required, it shall be thoroughly mixed and quartered until a sample of suitable size remains. If requested the sample shall be divided into 2 parts, placed in suitable containers and sealed and one of the containers, if requested, shall be delivered to the person apparently in charge of the feeds. In sampling canned or small packaged goods, one entire can or small package is sufficient for examination. In sampling liquids or semiliquids a portion drawn from one container is sufficient for examination. The department shall analyze, or cause to be analyzed, the sample collected, and the result of the analysis, together with additional information as the department may deem advisable, shall be promptly transmitted to the manufacturer and to the dealer or person in whose possession the product was sampled, and shall be published annually. The manufacturer or person responsible for the placing of any commodity sampled upon the market or the dealer or person in whose possession the feed was found, upon request to the department within 10 days after the report is mailed, shall be furnished with a portion of the official sample. The methods of analysis shall be those in effect at the time by the association of official analytical chemists.

(11) HEARING. If it shall appear from the examination of any sample of feed or other evidence that any of the provisions of this section relating to accuracy of label statements have been violated, the department shall cause notice of such violation to be given to the manufacturer and the dealer from whom said sample was taken; any party so notified shall be given an opportunity to be heard under such rules and regulations as may be prescribed by the department. After such hearing, if it appears that any of the provisions of this section relating to accuracy of label statements have been violated, the department may certify the facts to the proper prosecuting attorney and furnish that officer with a copy of the results of the analysis or other examination of such sample, duly authenticated by the analyst or other officer making the examination, under the oath of such officer.

(12) STATISTICS. For the purpose of obtaining information bearing directly on the agricultural situation in this state each manufacturer or distributor selling commercial feeds to purchasers in this state shall submit on request of the department a confidential statement of total tonnage of differing brands or types of feed sold during any calendar year, the tonnage to be classified as requested by the department. If accurate information is not obtainable estimates shall be made.

(13) AUTHORITY. The department may:

(a) Enforce the provisions of this section and prescribe and enforce administrative rules and regulations which shall be in harmony with the provisions of this section and the official pronouncements of the association of American feed control officials;

(b) Temporarily order withdrawn from distribution any lot of a feed product if the department has reasonable cause to believe

that it is being distributed in this state in violation of this section by serving written notice on the owner or custodian. A temporary order prohibits the distribution, movement or disposition of the feed product for up to 60 days after the service of the notice without the prior approval of the department pending further inspection, sampling or laboratory examination. If the department determines that the feed product is not being distributed in violation of this section after the inspection, analysis or examination, it shall immediately withdraw the order and promptly notify the owner or custodian. If the department determines that the feed product is being distributed in violation of this section, the department may extend the order by serving written notice on the owner or custodian. An extended order prohibits the distribution, movement or disposition of the feed product without the prior approval of the department. An extended order remains in effect until the final disposition of the feed is agreed upon or the feed is otherwise disposed of as the department authorizes or directs. If the final disposition is not agreed upon within 30 days after the service of notice of the extended order, the feed product shall be disposed of as the department by notice in writing may authorize or direct. Any order under this paragraph has the effect of a special order under s. 93.18 and is subject to the right to a hearing before the department if a request is received within 10 days after the service of the notice.

(c) Cooperate with any agency of the United States government in the inspection of medicated feeds and establishments where such feed is manufactured.

(d) Require persons manufacturing or distributing in this state any feed product to furnish the department with a label or facsimile thereof for the feed product sold or distributed by them.

(14) PENALTY. (a) A person who violates this section or an order issued or a rule promulgated under this section shall be fined not more than \$200 or imprisoned not more than 6 months or both.

(b) In addition to any other penalty, an adulterated feed product is subject to seizure by court action, condemnation and disposition as the court directs and the proceeds from any sale shall be paid into the state treasury. The court may release the feed product seized when the requirements of this section have been complied with, and upon payment of all costs and expenses incurred by the state in any proceedings connected with the seizure.

History: 1975 c. 39, 198, 199; 1977 c. 29 s. 1650m (4); 1979 c. 34; 1983 a. 189; 1985 a. 138; 1991 a. 39, 112; 1995 a. 4; 1997 a. 27, 253; 1999 a. 9.

Cross Reference: See also ch. ATCP 42, Wis. adm. code.

94.73 Agricultural chemical cleanup program.

(1) DEFINITIONS. In this section:

(a) "Agricultural chemical" means a substance that is a fertilizer or a nonhousehold pesticide and that is a hazardous substance, as defined in s. 299.01 (6).

(b) "Corrective action" means action that is taken in response to a discharge and that is necessary to restore the environment to the extent practicable and to minimize the harmful effects of the discharge to the air, lands or waters of this state. "Corrective action" includes action taken or ordered by the department of natural resources under s. 292.11 (7) in response to a discharge, but does not include action ordered by the department of natural resources under s. 291.37 (2) or 291.95. "Corrective action" does not include action taken, or ordered to be completed, before January 1, 1989.

(c) "Corrective action costs" means reasonable costs incurred in taking corrective action.

(e) "Discharge" means the discharge, as defined in s. 292.01 (3), of an agricultural chemical.

(f) "Fertilizer" has the meaning given in s. 94.64 (1) (e), except that it does not include nitrates or other forms of nitrogen found in the environment that cannot be attributed to a discharge.

(g) "Nonhousehold pesticide" has the meaning given in s. 94.681 (1) (c).

(h) “Responsible person” means a person who owns or controls an agricultural chemical that is discharged, a person who causes a discharge or a person on whose property an agricultural chemical is discharged or any of their successors in interest.

(2) CORRECTIVE ACTION ORDERED OR AUTHORIZED BY THE DEPARTMENT. (a) The department may issue an order requiring a responsible person to take corrective action. Except as provided in a memorandum of understanding under sub. (12), if a discharge involves a hazardous substance that may also become a hazardous waste, the department and the department of natural resources shall consult to determine whether corrective action should be taken under this section or s. 291.37 (2), 291.95 (1) or 292.31 (3).

(b) An order under par. (a) shall include all of the following:

1. The name and address of the responsible person.
2. A description of the property on which the responsible person is required to take the corrective action.
3. A description of the corrective action required to be taken.
4. A date by which the responsible person is required to complete the corrective action.

(bg) The corrective action ordered under par. (a) may include any of the following:

1. Investigation to determine the extent and severity of environmental contamination caused by the discharge.
2. Containment, removal, treatment or monitoring of environmental contamination caused by the discharge if the containment, removal, treatment or monitoring complies with chs. 281 to 285 and 289 to 299.
3. Transportation, storage, land application or disposal of contaminated materials, in compliance with chs. 281 to 285 and 289 to 299, except s. 281.48.

(c) The department may issue an order under par. (a) on a summary basis without prior notice or a prior hearing if the department determines that a summary order is necessary to prevent imminent harm to public health or safety or to the environment. If the recipient of a summary order requests a hearing on that order, the department shall hold a hearing within 10 days after it receives the request unless the recipient agrees to a later hearing date. The department is not required to stay enforcement of a summary order issued under this paragraph pending the outcome of the hearing. If the responsible person prevails after a hearing, the department shall reimburse the responsible person from the appropriation under s. 20.115 (7) (e) or (wm) for the corrective action costs incurred as the result of the department’s order.

(d) Soil or water removed from a discharge site as part of a corrective action may only be spread on land if that spreading on land is in compliance with chs. 281 to 285 and 289 to 299 and if the department has given its written authorization.

(2m) CORRECTIVE ACTION ORDERED BY THE DEPARTMENT OF NATURAL RESOURCES. The department of natural resources may take action under s. 292.11 (7) (a) or may issue an order under s. 292.11 (7) (c) in response to a discharge only if one or more of the following apply:

(a) The action or order is necessary in an emergency to prevent or mitigate an imminent hazard to public health, safety or welfare or to the environment.

(b) The department of agriculture, trade and consumer protection requests the department of natural resources to take the action or issue the order.

(c) The secretary of natural resources approves the action or order in advance after notice to the secretary of agriculture, trade and consumer protection.

(d) The department of natural resources takes action under s. 292.11 (7) (a) after the responsible person fails to comply with an order that was issued under s. 292.11 (7) (c) in compliance with this subsection.

(e) The department of natural resources takes the action or issues the order in compliance with a memorandum of understanding under sub. (12) between the department of agriculture,

trade and consumer protection and the department of natural resources.

(3) ELIGIBILITY FOR REIMBURSEMENT. A responsible person who takes corrective action may apply to the department for reimbursement of corrective action costs. Except as provided in sub. (3m), an applicant is eligible for reimbursement if all of the following conditions are met:

(a) The applicant submits an application that complies with sub. (5) within 3 years after incurring the corrective action costs or after October 14, 1997, whichever is later.

(b) The department finds that the corrective action costs incurred by the applicant are reasonable and the corrective action taken is necessary.

(c) The applicant demonstrates, to the department’s satisfaction, that the corrective action costs are not covered by insurance and have not been reimbursed from other sources.

(d) The applicant has complied with every corrective action order issued to the applicant by the department under sub. (2) or the department of natural resources under s. 292.11 (7) (c).

(f) The applicant, upon discovery of the discharge, promptly reported the discharge to the department or, if the applicant was required to report the discharge under s. 292.11 (2), to the department of natural resources.

(g) If the discharge occurred at a pesticide mixing and loading site owned or operated by the applicant, the applicant has fully complied with rules promulgated by the department under sub. (11) (d) requiring registration of pesticide mixing and loading sites.

(h) If the applicant was required to submit a work plan under sub. (4), the corrective action taken by the applicant was in accordance with a work plan approved by the department.

(3m) COSTS NOT ELIGIBLE FOR REIMBURSEMENT. An applicant under sub. (3) is not eligible for reimbursement of any of the following costs:

(a) Costs for corrective action taken in response to a discharge that is an intentional use of an agricultural chemical for agricultural purposes, unless the corrective action is ordered by the department under sub. (2) or by the department of natural resources under s. 292.11 (7) (c).

(b) Costs of reimbursing the department of natural resources for action taken under s. 292.11 (7) (a) or 292.31 (1), (3) or (7) because the applicant failed to respond adequately to a discharge.

(c) Costs for corrective action that a pesticide manufacturer or labeler takes in response to a discharge by that pesticide manufacturer or labeler.

(d) Costs for corrective action taken in response to a discharge that occurs while the agricultural chemical is being held or transported by a common carrier.

(e) Costs for corrective action taken in response to a discharge from a facility that is required to be licensed under s. 289.31 or that would be required to be licensed except that the department of natural resources has issued a specific exemption under s. 289.43 or rules promulgated under s. 289.05 (1) or (2).

(f) The cost of an activity that the department determines does not contribute to cleaning up a discharge.

(g) A cost related to the repair, replacement or upgrading of a facility, structure or equipment, except that, if a responsible person who applies for reimbursement demonstrates to the department’s satisfaction that the removal of an existing structure is the least expensive corrective action alternative, the department may reimburse the responsible person the depreciated value of the structure as determined by the department by rule.

(h) Loss of income.

(i) Attorney fees.

(j) Costs of permanent relocation of residents.

(k) Decreased property values.

(L) The cost of a responsible person’s time spent in planning and implementing the corrective action.

(m) Costs incurred for the review of corrective action work plans.

(n) Costs of aesthetic improvements.

(o) The cost of corrective action that is not in compliance with federal, state or local safety codes.

(p) A cost payable under an insurance or other contract.

(q) The cost of replacing discharged agricultural chemicals.

(r) The cost of providing alternative sources of drinking water, except that, subject to sub. (6) (b) to (f), the department may reimburse a responsible person who applies for reimbursement a total of not more than \$50,000 for the replacement or restoration of private wells or for connection to a public or private water source if the department or the department of natural resources orders the well replacement or restoration or the connection in response to a discharge.

(s) Liability claims.

(t) Costs incurred by any federal, state or local governmental entity.

(u) Corrective action costs incurred by a responsible person in response to a discharge caused by that responsible person's intentional or grossly negligent violation of law, including ss. 94.645 or 94.67 to 94.71, a rule promulgated under those sections or an order issued under those sections.

(v) Other costs excluded by the department by rule.

(4) WORK PLAN REQUIREMENTS. (a) Except as provided in par. (d), no responsible person may receive reimbursement for corrective action costs exceeding \$7,500 unless the responsible person submits to the department in writing, and the department approves, a work plan for the corrective action before the corrective action is taken.

(b) Except as agreed under sub. (12), the department of agriculture, trade and consumer protection shall promptly furnish the department of natural resources with a copy of each work plan submitted to the department of agriculture, trade and consumer protection under par. (a) for comment by the department of natural resources. Within 14 days after it receives a copy of a work plan or within a different time period agreed to under sub. (12), the department of natural resources may provide the department of agriculture, trade and consumer protection with any comments of the department of natural resources on the work plan. If the department of natural resources timely submits written comments on a proposed work plan, the department of agriculture, trade and consumer protection shall either incorporate those comments into the approved work plan or give the department of natural resources a written explanation of why the comments were not incorporated.

(c) The department shall approve or reject a work plan submitted under par. (a) within 30 days after its submission. If the department fails to approve or reject the work plan within 30 days after its submission, the work plan approval requirement in par. (a) no longer applies.

(d) This subsection does not apply to any of the following:

1. A reasonable and necessary corrective action taken on an emergency basis.

2. A corrective action taken before August 12, 1993.

(5) APPLICATION. (a) A responsible person who seeks reimbursement for corrective action costs shall submit an application to the department. The application shall be made on a form provided, and shall contain information reasonably required, by the department.

(b) A responsible person may not submit more than one application under par. (a) within a 12-month period for the same discharge site.

(c) Within 10 days from the date of the receipt of an application under par. (a), the department shall notify the applicant of the receipt of the application. The department shall grant or deny the application within 90 days after receipt of the application unless the applicant agrees to an extension.

(d) Before or after the department receives an application under par. (a), the department may issue a preliminary opinion on whether an applicant is eligible for reimbursement of corrective action costs. The opinion is not binding on the department.

(e) No person may make a false statement or misrepresentation on an application submitted under this section. A person who makes a false statement or misrepresentation on an application related to a corrective action is ineligible for reimbursement related to that corrective action and is ineligible for any reimbursement related to any other corrective action taken or ordered within 5 years after the date of the false statement or misrepresentation. If the responsible person has received any reimbursement for which the responsible person is ineligible under this paragraph, the responsible person shall refund the full amount of that reimbursement to the department. The amounts refunded to the department under this paragraph shall be deposited in the agricultural chemical cleanup fund.

(6) AMOUNT OF REIMBURSEMENT. (a) If the department determines that a responsible person is eligible for reimbursement of corrective action costs under sub. (3), the department shall authorize reimbursement in the amount specified in this subsection and in the manner provided in sub. (7).

(am) If more than one responsible person is eligible for reimbursement under sub. (3) for corrective action taken in response to one or more discharges at the same site, the combined amount paid to those responsible persons may not exceed the maximum amount specified for a single responsible person under this section, except as provided by the department by rule. The department shall allocate payments among the responsible persons according to rules promulgated by the department.

(b) Except as provided in pars. (c) and (e), the department shall reimburse a responsible person an amount equal to 75% of the corrective action costs incurred for each discharge site that are greater than \$3,000 and less than \$400,000.

(c) Except as provided in par. (e), the department shall reimburse a responsible person an amount equal to 75% of the corrective action costs incurred for each discharge site that are greater than \$7,500 and less than \$400,000 if any of the following applies:

1. The responsible person is required to be licensed under ss. 94.67 to 94.71.

2. The responsible person employs more than 25 persons.

3. The responsible person has gross annual sales of more than \$2,500,000.

(d) For the purposes for pars. (b) and (c), a discharge that occurs in the course of transporting an agricultural chemical is considered to have occurred at the site from which the agricultural chemical was being transported if the site from which the agricultural chemical was being transported is under the ownership or control of the person transporting the agricultural chemical.

(e) The department may not reimburse corrective action costs that exceed \$100,000 for any one discharge for which groundwater remediation is not ordered unless the criteria in rules promulgated under par. (f) are satisfied.

(f) The department may promulgate rules under which it may provide reimbursement under pars. (b) and (c) for corrective action costs that exceed \$100,000 at a site at which groundwater remediation is not ordered if the applicant obtains the approval of the department before incurring the costs and if the contamination is extensive or complex cleanup strategies are required. The rules shall establish criteria for exceeding the \$100,000 limit, such as the size of the area contaminated or the type of agricultural chemical that is involved.

(7) PAYMENT. (a) The department may make payments to a responsible person who is eligible for reimbursement under sub. (3) if the department has authorized reimbursement to that person under sub. (6). The department shall make payment from the appropriation accounts under s. 20.115 (7) (e) and (wm), subject to the availability of funds in those appropriation accounts. If there are insufficient funds to pay the full amounts authorized

under sub. (6) to all eligible responsible persons, the department shall distribute payments in the order in which applications were received, unless the department specifies, by rule, a different order of payment.

(b) The department may promulgate rules specifying the procedure by which, and the order in which, it will distribute payments under par. (a). The department may establish distribution priorities or formulas based on the severity of contamination, the time elapsed since corrective action costs were incurred or other factors that the department considers appropriate.

(8) SUBROGATION. The department is entitled to the right of subrogation for the reimbursement of corrective action costs to the extent that a responsible person who receives reimbursement of corrective action costs may recover the costs from a 3rd party. The amounts collected by the department under this subsection shall be deposited in the agricultural chemical cleanup fund.

(9) SAMPLING REQUIREMENTS. The department, in cooperation with the department of natural resources, shall establish a program for the collection and analysis of soil and other environmental samples at sites where discharges may have occurred, including sites required to be registered according to rules promulgated by the department of agriculture, trade and consumer protection under sub. (11).

(11) RULES. The department shall promulgate rules to implement this section. The department may promulgate rules regarding all of the following:

(a) The form of the application required to be filed with the department by persons seeking reimbursement of corrective action costs.

(b) The procedures to be used by the department in determining eligibility for and the amount of reimbursement for corrective action costs.

(c) The procedures to be used in making annual payments under sub. (7).

(d) Registration requirements for persons who own or operate pesticide mixing and loading sites.

(e) Reasonable and customary charges for corrective action costs.

(f) Payment priorities under sub. (7) among eligible responsible persons.

(g) Requirements related to the contents of orders under sub. (2) or work plans under sub. (4) (a).

(h) Corrective action costs that are not eligible for reimbursement under this section.

(12) MEMORANDUM OF UNDERSTANDING. The department and the department of natural resources shall enter into a memorandum of understanding establishing their respective functions in the administration of this section. The memorandum of understanding shall establish procedures to ensure that corrective actions taken under this section are consistent with actions taken under s. 292.11 (7). The department and the department of natural resources may request that the secretary of administration provide assistance in accomplishing the memorandum of understanding.

(12m) SAMPLE COLLECTION AND ANALYSIS. For the purpose of investigating a discharge or exercising its authority under this section, the department may collect and analyze samples of plants, soil, surface water, groundwater and other material.

(13) PENALTY. Any person who violates this section or an order issued or rule promulgated under this section shall forfeit not less than \$10 nor more than \$5,000 for each violation. Each day of continued violation is a separate offense.

(14) ENFORCEMENT. The department, the department of justice at the request of the department or any district attorney at the request of the department may bring an action in the name of the state to recover a forfeiture under sub. (13) or to seek an injunction restraining the violation of an order issued by the department under this section.

(15) SURCHARGE ADJUSTMENTS. (a) The department may, by rule, reduce any of the surcharges in ss. 94.64 (3r) (b) and (4) (a) 5., 94.681 (3), 94.685 (3) (a) 2., 94.703 (3) (a) 2., and 94.704 (3) (a) 2. below the amounts specified in those provisions. The department shall adjust surcharge amounts as necessary to maintain a balance in the agricultural chemical cleanup fund at the end of each fiscal year of not more than \$2,500,000, but may not increase a surcharge amount over the amount specified in s. 94.64 (3r) (b) or (4) (a) 5., 94.681 (3), 94.685 (3) (a) 2., 94.703 (3) (a) 2., or 94.704 (3) (a) 2.

(b) If the department proposes to promulgate a rule under par. (a) using the procedures under s. 227.24, the department shall notify the cochairpersons of the joint committee on finance before beginning those procedures. If the cochairpersons of the committee do not notify the secretary that the committee has scheduled a meeting for the purpose of reviewing the proposed rule, the department may begin the procedures under s. 227.24. If, within 14 working days after the date of the department's notification, the cochairpersons of the committee notify the secretary that the committee has scheduled a meeting for the purpose of reviewing the proposed rule, the department may not begin the procedures under s. 227.24 until the committee approves the proposed rule.

History: 1993 a. 16, 437; 1995 a. 27, 227; 1997 a. 27, 86; 2001 a. 16; 2003 a. 33; 2005 a. 347.

NOTE: 2005 Wis. Act 347, which affected this section, contains extensive explanatory notes.

94.76 Honeybee disease and pest control. (1) The department shall maintain surveillance of the beekeeping industry for the detection and prevention of honeybee diseases and pests, and may promulgate or issue such rules or orders or adopt such control measures which in its judgment may be necessary to prevent, suppress or control the introduction, spread or dissemination of honeybee diseases and pests in this state.

(2) In the execution of its functions under this section, the department and its authorized agents shall have free access at all reasonable times to all apiaries, buildings, structures, rooms, vehicles or places where honeybees, beehives, beekeeping equipment or appliances, or honeybee products may be kept or stored, or in which they may be transported, and may open any package or container believed to contain honeybees, honeycombs, honeybee products, beekeeping equipment or appliances or any other materials capable of transmitting honeybee diseases or harboring pests, and obtain inspectional samples from such products or materials for further testing, examination or analysis.

(3) Honeybees shall be kept in movable frame hives. No person shall knowingly store, hold or expose honeybee products, beehives or any other beekeeping equipment or appliances in a manner which may contribute to the spread or dissemination of honeybee diseases or pests.

(4) No person may bring or cause to be brought into this state any honeybee, beehive, drawn comb or used beekeeping equipment or appliances without reporting the shipment to the department. Reports shall be made on forms furnished by the department which shall include the name and address of the consignor, name and address of the consignee, date and manner of shipment, and any further information that the department requires. All reports shall be accompanied by a certificate from an official inspector certifying that the materials have been inspected as required by the department by rule and are apparently free from honeybee diseases or pests.

(5) The department shall charge fees sufficient to cover the reasonable cost of inspections made at the request of any beekeeper to enable the interstate movement of beekeeping equipment or appliances, or honeybees or their products, and may bring an action for the payment thereof including reasonable costs of collection.

History: 1975 c. 39; 1993 a. 216; 1995 a. 307.

94.761 Beekeepers, etc.; agricultural pursuit. The moving, raising and producing of bees, beeswax, honey and honey

products shall be deemed an agricultural pursuit. Any keeper of 50 or more hives of bees who is engaged in the foregoing activities is a farmer and engaged in farming for all statutory purposes.

94.77 Penalties. Any person who violates any provision of this chapter for which a specific penalty is not prescribed shall be fined not to exceed \$200 or imprisoned in the county jail not to exceed 6 months or both.

History: 1999 a. 83.